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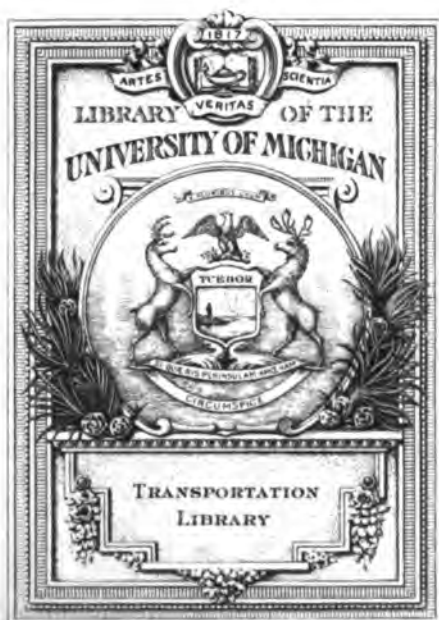
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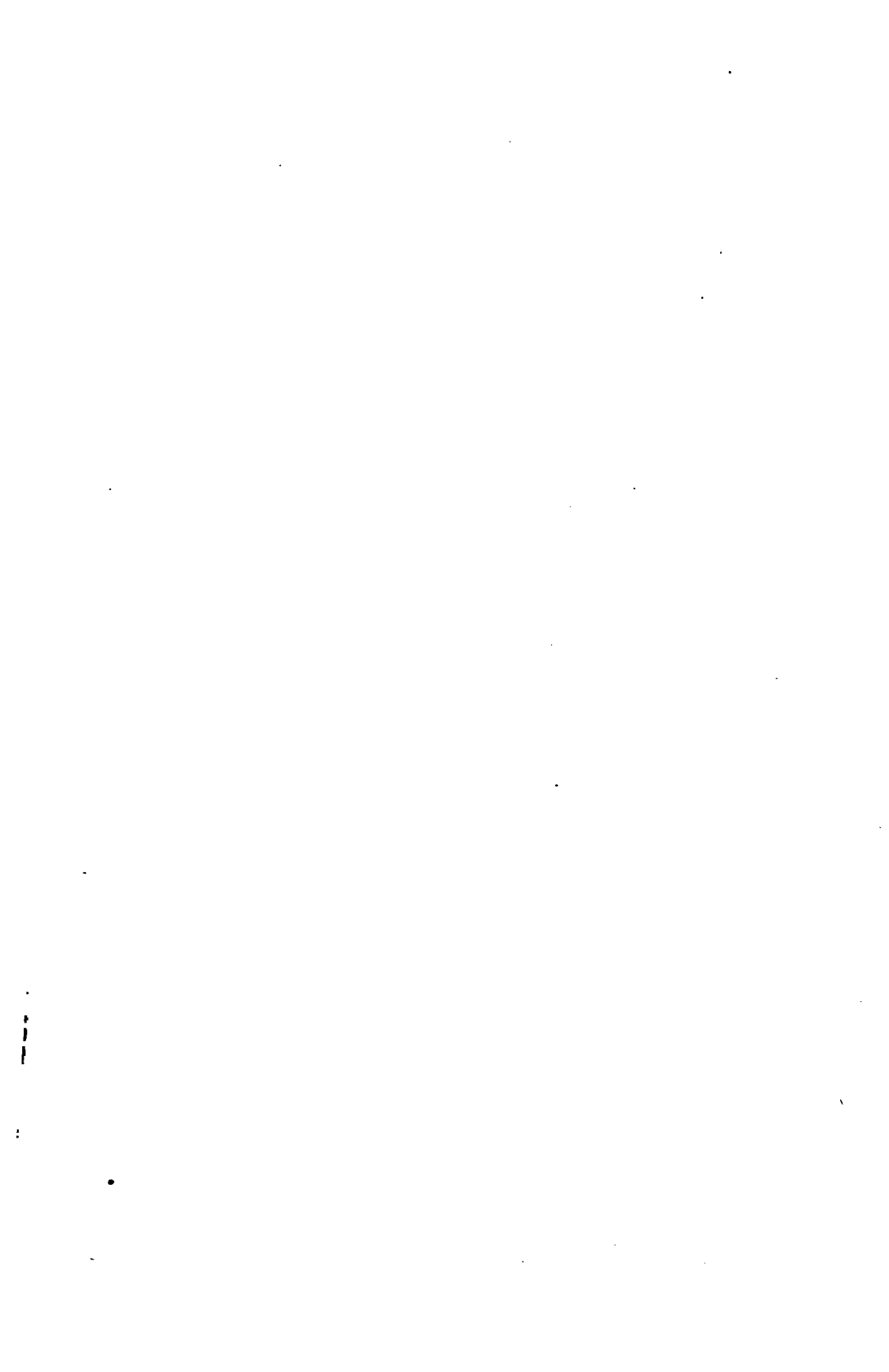
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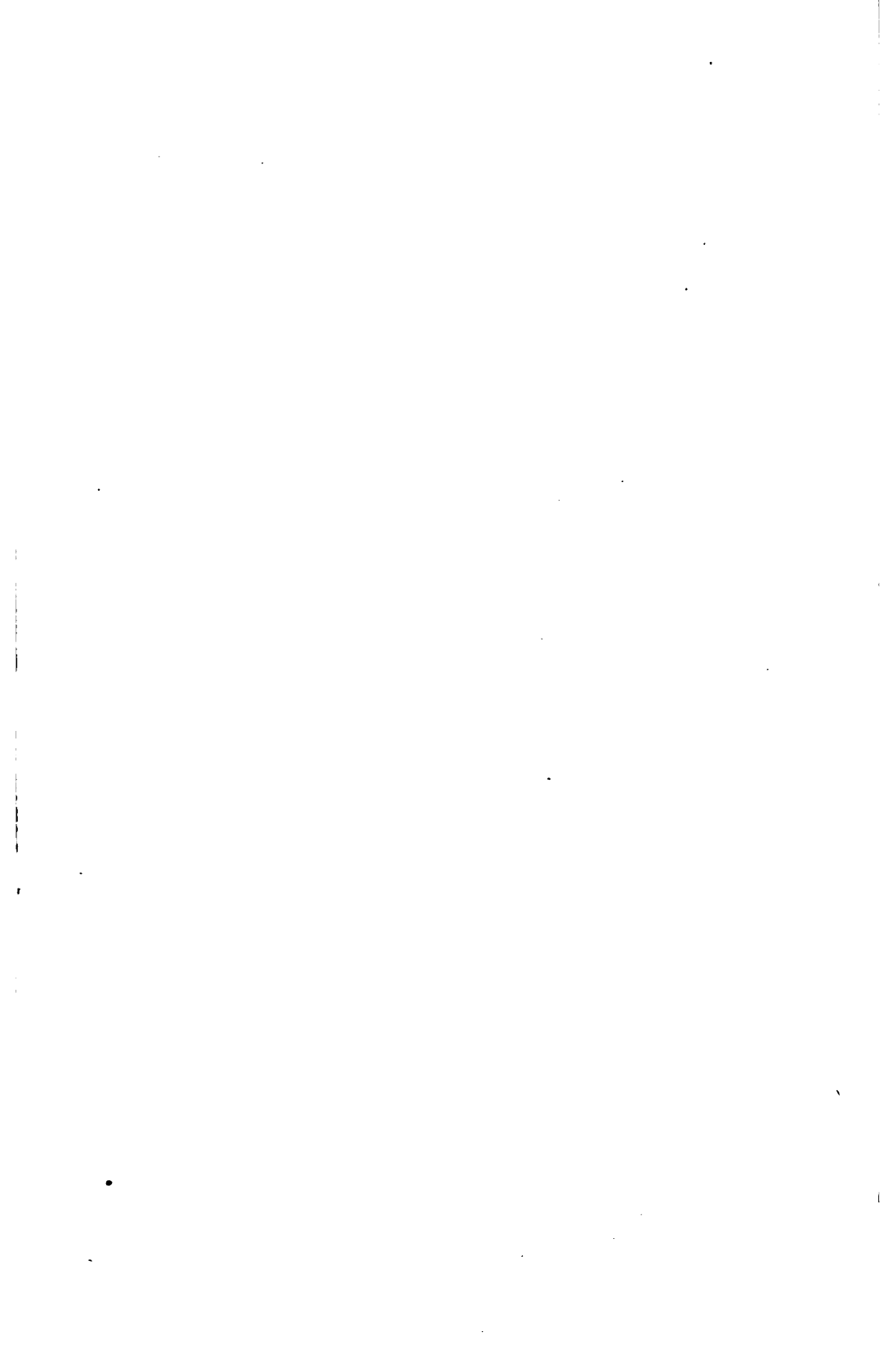


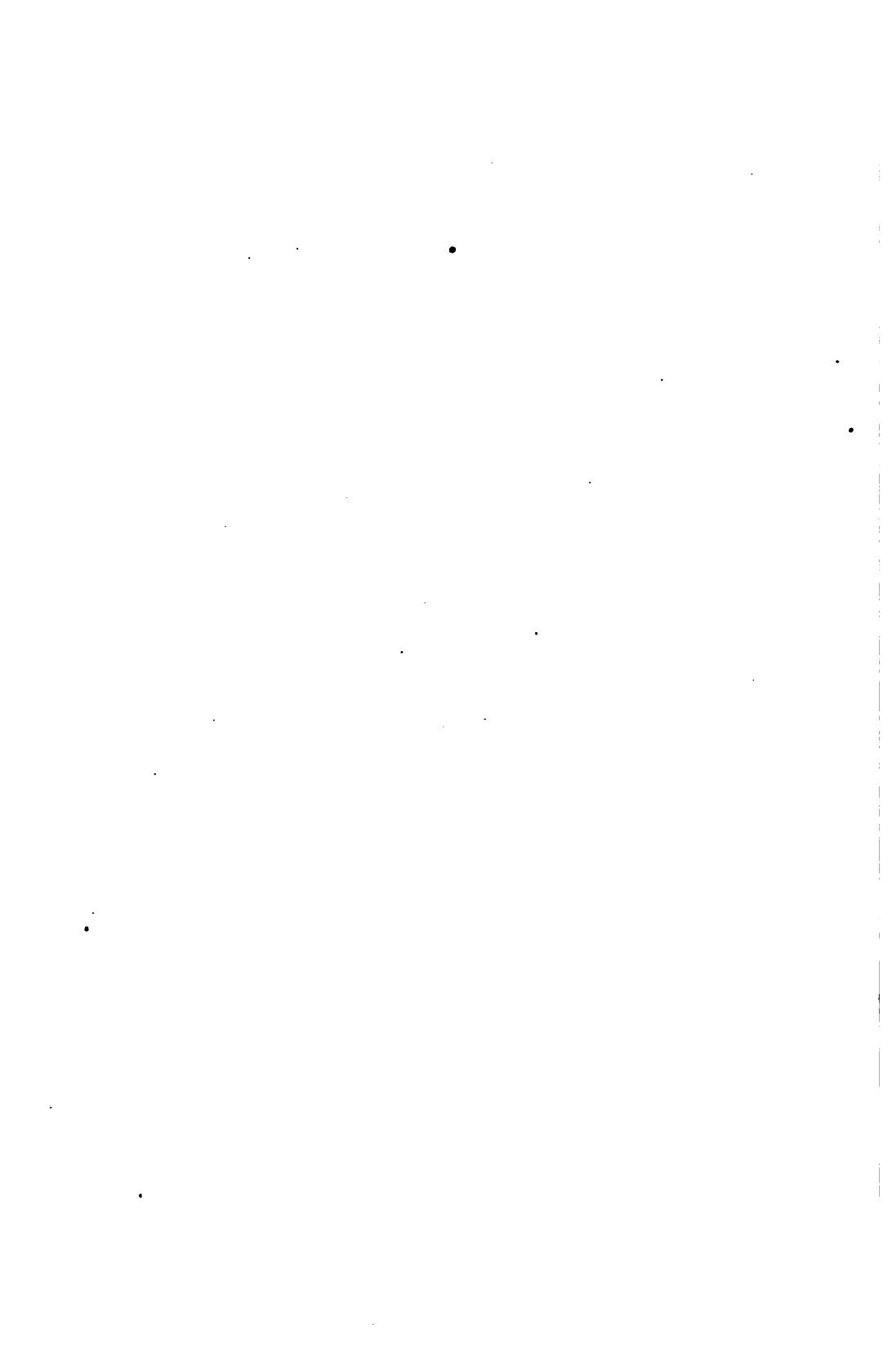
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 57

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INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

FEBRUARY TO JUNE, 1920

REPORTED BY THE COMMISSION



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1920

INTERSTATE COMMERCE COMMISSION.

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March 17, 1920, COMMISSIONER AITCHISON's term as chairman expired; on that date COMMISSIONER CLARK became chairman.

¹ Vacancy.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 10393.

PITTSBURGH, ALLEGHENY & McKEES ROCKS
RAILROAD COMPANY

v.

DIRECTOR GENERAL, PENNSYLVANIA COMPANY, ET AL.

Submitted October 17, 1919. Decided February 13, 1920.

Pittsburgh, Allegheny & McKees Rocks Railroad Company found to be a common carrier which may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation should not be more than is reasonable.

Luther M. Walter, John S. Burchmore, W. W. Collin, jr., and Newel D. Belnap for complainant.

George Stuart Patterson, James Stillwell, A. P. Humburg, and C. J. Rixey, jr., for Director General of Railroads.

George Stuart Patterson for Pennsylvania Railroad Company; and *Frank M. Swacker* for Pittsburgh & West Virginia Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, DANIELS, AND WOOLLEY.

By complaint filed on January 3, 1919, the Pittsburgh, Allegheny & McKees Rocks Railroad Company alleges in substance that it is a common carrier operating a terminal railway in the Pittsburgh district of Pennsylvania connecting with the lines of certain defendants; that for the transportation of freight in interstate commerce to or from points in the Pittsburgh district, including points or industries on complainant's line, defendants and their connections apply and charge a common or group rate; and that the compensation accorded to complainant by defendants out of the through rates is not and has not been adequate. Violations of section 1, 3, and 6 of the act to regulate commerce are alleged in general terms. Complainant prays that defendants be required to accord to it out of the Pittsburgh district rates on interstate shipments to and from points and industries on its line a reasonable division or allowance for the services performed by it; and that they be required to pay to complainant as reparation the difference between the division or allowance actually paid to it since May 1, 1916, and the amount which the Commission may find reasonable.

The position of defendants is in substance, that complainant is not a common carrier but a plant facility, and is entitled to no relief.

The salient facts regarding complainant may be summarized as follows: It is a consolidated or merged company, organized September 25, 1899, under the laws of Pennsylvania, the merged companies being the North Shore Terminal Railroad Company, Pittsburgh & Allegheny Railroad Company, and McKees Rocks Railroad Company, all chartered under the laws of Pennsylvania as common carriers; was adjudged a common carrier by the Allegheny County Court in the course of certain tax litigation, this holding being sustained by the Supreme Court of Pennsylvania; complies with federal and state requirements applicable to common carriers; maintains an independent organization of 169 employees for performing its work; owns its right of way and a number of buildings, including its office and repair shop; assesses tariff charges on all cars handled, including demurrage in accordance with the national car-demurrage rules; pays its trainmen in accordance with the standards set for railroads under federal control; issues no bills of lading; and handles neither mail nor express. It is an associate member of the American Railroad Association and has membership in the Car Builders' Association and the Bureau of Explosives. On April 1, 1904, it became a member of the per diem rules agreement, but in August, 1905, one of its two rail divisions was eliminated from the agreement and on February 19, 1914, the other was suspended by the trunk lines pending determination of its status by the commission.

It was testified that complainant was under federal control until July 11, 1918, when it was advised by the United States Railroad Administration that it had been relinquished.

The investment in road is said to be \$538,284.43. This is the book value of the property as of December 31, 1918. The annual report of the carrier for 1918 states its total corporate surplus for the year as \$76,310.19, railway operating income as \$48,292.57, and its net income as \$26,941.56. No dividends were declared during the year. The total stock is \$95,000 and the funded debt unmatured is \$427,080.

Complainant has three divisions, the McKees Rocks, the Allegheny, and the river division. The first and second are at McKees Rocks and Allegheny, Pa., respectively, on opposite banks of the Ohio River and have no physical connection. The mileage is:

	Main track.	Yard track and sidings.	Total.
	Miles.	Miles.	Miles.
McKees Rocks division.....	3.36	11.09	14.05
Allegheny division.....	.33	1.36	1.74
Total.....	3.74	13.05	16.79

Apparently only track owned by complainant was included in this statement. Complainant also uses a short stretch of track belonging to the Pittsburgh & Lake Erie Railroad Company, hereinafter called the Lake Erie, at McKees Rocks and has trackage rights over portions of the track of the Baltimore & Ohio Railroad Company at Allegheny, including tracks leading to the Edith Furnace of the United States Steel Corporation.

The floating equipment of the river division consists of a steamboat, wharf boats, and several barges. The steamer is operated on regular schedule between Allegheny, McKees Rocks, and Bellevue, Pa., and is used by the public, carrying some 250,000 passengers a year under published tariff. Less-than-carload freight is also carried, the aggregate during the years 1913 to 1917, inclusive, being about 1,873 tons. This service is not in controversy and will not be further considered.

Eight locomotives and 165 freight cars are owned by complainant. It has offered, and has always been willing, to interchange its cars with the trunk lines at the per diem rate, but the offer was refused.

Complainant's road connects with those of the Pennsylvania and Baltimore & Ohio railroads at Allegheny, and with the Lake Erie and the Pittsburgh, Chartiers & Youghioghenny Railroad, owned by the Pennsylvania and the Lake Erie and hereinafter referred to as the Chartiers railroad, at McKees Rocks.

The principal industry served by complainant is the Pressed Steel Car Company, hereinafter called the car company, which has plants at Allegheny and McKees Rocks. Its president and four other persons are either officers or directors in both companies. It was stated that complainant's capital stock, except for directors' qualifying shares, is owned by the car company. The annual report for 1918 shows that of the 1,900 shares outstanding 860 were held by the car company, 920 by complainant's president, and the remaining 120 in blocks of 20 each by the six directors other than the president.

At McKees Rocks complainant also serves the Pennsylvania Malleanable Company and the Central Car Wheel Company, subsidiaries of the car company; the Schoen plant of the Carnegie Steel Company, hereinafter designated the Schoen plant; and the Lefkovich Coal Company. It serves the Pittsburgh Forge & Iron Company at Allegheny, and by means of the Baltimore & Ohio tracks reaches the Edith furnace. An exhibit introduced by defendants shows on complainant's line, in addition to the foregoing, A. Badewski and P. Wall Manufacturing Company, and a witness for the Lake Erie testified that during 1918 that road turned over to complainant for delivery cars consigned to the Hine Chimney Company, Davis-Smith Company, and the Dravo Contracting Company. The location of the last three companies is not disclosed.

Complainant has a team track at McKees Rocks and one at Allegheny. A map made an exhibit indicates that both are adjacent to public highways, but the extent of their use is not shown.

There is some evidence concerning fences surrounding the plants of the car company and a large part of complainant's tracks. Evidence on this subject is material only in so far as it bears upon the good faith of the offer to carry for the public and the ability of the public to accept such offer. No evidence of failure to perform its duties has been introduced, and it is testified by complainant's superintendent that the protection afforded by the fences adds to safety in operation, that complainant has never refused to carry freight for the public, and that the fences which inclose some of its tracks do not in any manner "impede its services or prevent it from performing its functions as a railroad."

The movements of cars in interchange, interplant, and intraplant hauls are traced in detail by witnesses, but for the purposes of this report it is sufficient to describe the switching service performed by complainant as follows: (a) between interchange points with trunk lines and points in the plant of the car company or its subsidiaries; (b) between such interchange points and the points at which cars are delivered to or received from independent industries or their industrial railroads; (c) hauling coal from tracks by the water front at Allegheny, where it is loaded into the cars from boats, to the Pittsburgh Forge & Iron Company; (d) between different plants served by complainant, as from the Schoen plant to a point within the car company's plant; and (e) between two points in the same plant.

In connection with (c) it was stated that the complainant sometimes takes the cars into the plant of the Pittsburgh Forge & Iron Company and spots them, and at others turns them over to the industrial railroad of that company, the Pennsylvania Western & Ohio River Connecting Railroad. In neither case is any division accorded that industrial line or allowance made to the industry, complainant deeming its compensation too small to divide.

Subdivisions (d) and (e) cover traffic moving wholly within the state of Pennsylvania. A separate charge is made for each such movement and, in the absence of any unjust discrimination or undue prejudice against interstate commerce or shippers, they need not be considered by this Commission. This proceeding has to do primarily with the interchange service, concerning which it was said by one of complainant's witnesses:

In interchange movement we pick up cars at point of interchange in train lots, bring them into our yard, classify them and in some instances weigh them before classifying them and then take those cars from the classification yard

to the point of spotting. When the car is made empty it is pulled from the unloading point either to a point for reloading or sent out to the trunk line connection.

Complainant submits the following tabulation of interchange traffic for the years 1917 and 1918:

	Cars.		Tons.		Per cent tons.	
	1917	1918	1917	1918	1917	1918
LOADED CARS.						
Interchange account Pressed Steel Car Co., McKees Rocks.....	17,374	16,712	688,915	690,830	63.23	71.02
Interchange account same company, Allegheny.....	5,329	4,316	197,781	194,416	18.15	19.98
Interchange account all other industries.....	4,231	1,907	202,910	87,504	18.62	9.00
Total.....	26,934	22,935	1,089,606	972,750	100.00	100.00
NEW CARS.						
Interchange account Pressed Steel Car Co., McKees Rocks.....	6,741	3,609	147,978	78,336	59.66	64.82
Interchange account same company, Allegheny.....	4,610	1,861	100,111	42,509	40.35	35.18
Total.....	11,351	5,460	248,089	120,845	100.00	100.00

The figures for the car company include those for its subsidiaries. Another exhibit introduced by complainant shows that the tonnage and number of cars handled for the Carnegie Steel Company in 1917 and 1918 were the same as the figures for those years shown in the foregoing table as "Interchange account all other industries." This would indicate that during those years the only independent industry served in interchange service was the Schoen plant, apparently ignoring 44 loaded cars consigned to the Iline Chimney Company and others mentioned by a witness for defendants.

About 200 carloads of coal which moved to Allegheny by water were handled in 1918 for the Pittsburgh Forge & Iron Company.

Much of the record is devoted to a detailed recital of the negotiations for payment to complainant of a portion of the Pittsburgh district rates on interstate shipments in connection with which it performed a switching service. The outstanding features are that the trunk lines have not been willing to recognize complainant as a common carrier and that the latter has never been satisfied with the compensation accorded it.

The Wabash-Pittsburgh Terminal Railway was the first road to absorb complainant's charges, the absorption becoming effective on June 1, 1909. Its action was followed by the Buffalo, Rochester & Pittsburgh. The absorption was generally \$2.50 per car but different amounts were absorbed on some commodities, as \$1.60 per car on sand and \$2 on coal. These absorptions were canceled after the Commission made its report in the *Industrial Railways Case*, 29 I. C. C., 212, decided January 20, 1914.

Effective May 8, 1916, the trunk lines filed tariffs providing for the absorption out of the current McKees Rocks rate of complainant's charges to the extent of 4.27 cents per ton, net or gross as rated, on carload-revenue shipments. That of the Lake Erie is typical and the pertinent provisions are set forth in the margin.¹ This latter tariff was canceled and superseded, effective June 15, 1916, by one containing the same rules except that the absorption was made 50 cents per car on new cars and 25 cents on cars repaired, or to be repaired. Similar changes were made by the other trunk lines except the Buffalo, Rochester & Pittsburgh and the Bessemer & Lake Erie. With a few minor changes these provisions are in effect to-day.

Complainant has steadily contended that the absorption of 4.27 cents is not compensatory and has sought to have it increased. Negotiations were had with representatives of the trunk lines and later with officials of the United States Railroad Administration. No portion of the increase in rates under General Order No. 28 of the Director General accrued to complainant.

At various times the trunk lines have offered to perform the switching and spotting service now done by complainant, and this offer was renewed at the hearing. The offer never progressed to the stage where the trunk lines performed the work, although it is testified for complainant that no obstacles were placed in their way. There seems to be no unanimity of opinion as to the ability of the trunk lines to perform all of the work now done by complainant, or as to the cost to the trunk lines. Apparently there would be interference unless the switching, including the interplant, was under one control, but the trunk lines have made no arrangements for a unified control. Complainant's superintendent testified that the interchange and spotting service could be performed by the trunk lines, the rest of the work being done by complainant, but that it would be more expensive than the present method and unsatisfactory to every one concerned. In 1916 a committee representing the trunk lines estimated that the cost of the service would be 4.27 cents per ton if performed by complainant and about 6 cents per ton if done by the

¹ On all carload revenue shipments, four and twenty-seven hundredths (4.27) cents per ton, net or gross as rated, governed by the same minimum weight, rules and regulations as apply to the through rate, will be allowed to the Pittsburgh, Allegheny & McKees Rocks Railroad Company out of the current McKees Rocks, Pa., rate.

On cars containing ten thousand (10,000) pounds or more of less carload revenue freight, four and twenty-seven hundredths (4.27) cents per ton, net or gross as rated, will be allowed to the Pittsburgh, Allegheny & McKees Rocks Railroad Company out of the current McKees Rocks, Pa., rate. The minimum allowance to the Pittsburgh, Allegheny & McKees Rocks Railroad Company on cars containing less than carload shipments will be computed on basis of 20,000 lbs.

Any charge of the Pittsburgh, Allegheny & McKees Rocks Railroad Company in excess of the allowances named above will be in addition to the current McKees Rocks, Pa., rate.

trunk lines. In view of the conclusion hereinafter reached regarding complainant's status, it can not be held, in the absence of complainant's assent, that it is optional with the trunk lines to perform this service or have it done by complainant.

An anomalous situation exists with respect to interstate traffic moving over complainant's line between the Schoen plant and the interchange with the Chartiers railroad. Prior to January 1, 1917, the Chartiers railroad reached that plant over tracks laid by the Carnegie Steel Company on land leased by it. The lease expired and on December 31, 1916, the connection was broken. In order to continue its service to and from the Schoen plant, the Chartiers railroad entered into a contract with complainant whereby the latter agreed to act as its agent in performing this interchange service. The compensation under the contract was 4.27 cents per ton, net or gross as rated, subject to revision by agreement of the parties; and the duration was for one year, or until terminated upon six months' notice.

No readjustment of compensation was made and the contract was ended by complainant December 31, 1917, upon the required notice. For a short time the Chartiers railroad turned over to the Lake Erie cars consigned to the Schoen plant, but congestion in the yards of the latter carrier made the service unsatisfactory. On or about February 7, 1918, at the solicitation of the Carnegie Steel Company and the chairman of the Pittsburgh operating committee, and upon assurances from the latter that it would be fairly compensated, complainant resumed the service. Endeavors to agree upon the amount of the absorption met with little success. Complainant submitted to an accounting committee appointed to investigate the matter, figures indicating a cost of over 10 cents per ton. The committee recommended that 5.5 cents per ton be allowed, using the so-called plant-facility basis, although there was no affiliation between complainant and the Carnegie Steel Company. This amount was rejected by complainant and an arbitration committee was appointed which agreed upon a figure of 7.00 cents per ton. As the Schoen plant does its own spotting, the trunk line representative later insisted upon a deduction of 1.5 cents to be paid to the Schoen plant for performing that service. Complainant finally accepted 6.45 cents per ton.

It was agreed that there should be tariff authority for this absorption, but none was published, the interested trunk lines treating it as an "operating matter." Complainant's tariff provides a charge of 10 cents per ton, net or gross, as rated, on this interstate traffic to and from the Schoen plant, and the absorption tariff provides for an absorption of 4.27 cents out of the current McKees Rocks rate, which

is the Pittsburgh district rate, any excess to be paid by the shipper in addition to the district rate. In practice complainant bills the Chartiers railroad for the full amount of its charge, 10 cents per ton, and receives payment at the rate of 6.45 cents per ton. At the time the agreement was made it was conceded to be unfair to charge the Carnegie Steel Company more than the district rate paid by other shippers. Defendants' witness who testified regarding this situation expressed the view that under private operation it would have been unlawful and would not have been allowed to continue. It is not explained how federal control warrants a departure from the published rates. If settlement has been made on the basis of the Pittsburgh district rates, the legal charges have not been paid or collected.

The figure of 4.27 cents per ton, adopted by the trunk lines as the cost of complainant's services in 1916, and used as the basis for the published absorption, was originally proposed by an operating committee appointed by the trunk lines, and was later accepted by an accounting committee appointed by the trunk lines to determine whether certain industrial roads were common carriers or plant facilities and report to a traffic committee the cost of service. Deciding factors in passing upon the status of a road were the number of industries served and the proportion of traffic handled for the controlling or affiliated industry. Complainant was deemed by the accounting committee to be a plant facility.

The formula upon which costs to a common carrier were computed included a number of items eliminated from the plant-facility basis and resulted in a materially higher figure than the latter.

For complainant it was testified that the figure of 4.27 cents was based on all tonnage, including new cars which average 22 tons in weight. At 4.27 cents per ton the estimated cost of moving these would be 93.94 cents, but the absorption, except in the case of the Buffalo, Rochester & Pittsburgh and the Bessemer & Lake Erie, is 50 cents on new cars and 25 cents on cars repaired or to be repaired.

A member of the trunk lines' accounting committee testified that if he were determining the present cost on the plant-facility basis, he would increase the earlier estimate by from 70 to 75 per cent.

Complainant introduced statements showing the cost of service and interest on the investment at 5 per cent for the years 1915 to 1918, inclusive. The figures in cents per ton are:

	1915	1916	1917	1918
Cost.....	6.22	6.50	9.037	13
Interest on Investment.....	1.78	1.17	1.652	1.88
Total.....	8.00	7.76	10.689	14.88

Subsequent to the hearing complainant was requested to explain why the data as to cost of service purported to show a separation between the cost of interchange service and intermill service on the engine-hour basis when it appeared that the apportionment was on a tonnage basis. On May 27, 1919, counsel for complainant replied:

It is not possible from the records to segregate the engine time as between interchange service and interplant or intraplant service * * * ; If the Commission can not accept our testimony as sufficient to establish the cost figures for which we contend, and is therefore unwilling to fix divisions of a reasonable amount, we ask that its decision shall not for that reason be withheld pending further hearings or investigations. All that we ask in that event is a formal adjudication of the status and rights of this company * * *.

McCHORD, Commissioner:

The above is the statement of facts prepared by the examiner, which we find to be substantially correct.

Under these facts we are of opinion and find that complainant is a common carrier, and that as such it may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under proper tariff provision by the roads having the line haul. Its compensation, whether in the form of divisions of the through rates or of switching absorptions must not be more than is reasonable and a specific and complete statement of the basis agreed upon must be filed with us immediately upon its adoption.

Complainant's cost figures indicate no attempt to segregate items of expense wholly chargeable to either interchange or intermill work, or any effort to differentiate between the cost of hauling carload freight and new cars. The "investment" is the book cost. Accrued depreciation has been deducted from investment in locomotives and cars, but investment in road is original cost.

We find that the estimated cost of 4.27 cents per ton was made on the erroneous assumption that complainant is merely a plant facility and excludes items of expense which may properly be considered; and that the present cost of service is materially in excess of 4.27 cents per ton on any basis.

The record does not show the value of the property devoted in whole or in part to the public use as distinguished from that devoted in whole or in part to the intraplant work; or, as to the former, make any allocation of expenses between interstate and intrastate commerce. No finding can be made as to the maximum division or absorption which may properly be accorded complainant out of the Pittsburgh district rates on interstate shipments hereafter made, and the same may be said regarding past shipments.

As no basis for an award of reparation to complainant is shown, it is unnecessary to discuss the Commission's jurisdiction to make such an award.

An order dismissing the complaint in so far as it relates to the question of reparation will be entered.

WOOLLEY, *Commissioner*, dissents.

57 I. C. C.

No. 9492.¹

HELENA TRAFFIC BUREAU

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY, DIRECTOR GENERAL, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
699, 799, 1606, 2043, 2045, 2060, 2188, 4218, 4219, 4220, and 4944.

Submitted October 1, 1919. Decided February 11, 1920.

Rates from St. Louis, Mo., and points in so-called defined territories the rates from which base on St. Louis to Helena, Ark., found to be unduly prejudicial to Helena and unduly preferential of Memphis, Tenn. Nonprejudicial basis of rates prescribed for the future.

M. W. Martin for complainant.

W. M. Taylor for Pine Bluff Traffic Bureau; and *H. M. Gregory* and *Gregory & Beals* for Wynne Wholesale Grocery Company and Forrest City Grocery Company, interveners.

Charles D. Drayton for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Southern Railway Company; *E. C. Turner* for Yazoo & Mississippi Valley Railroad Company and Illinois Central Railroad Company; *Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company and its receiver; and *E. C. Sides* for Chicago, Rock Island & Pacific Railway Company and its receiver.

A. P. Humburg, E. C. Turner, E. A. Smith, H. G. Herbel, F. G. Wright, W. F. Dickinson, W. F. Hughes, James M. Chaney, and R. Walton Moore for all defendants.

¹ This report also embraces No. 10032, Helena Traffic Bureau v. Atchison, Topeka & Santa Fe Railway Company, Director General, et al.; also Portions of Fourth Section Applications Nos 799, 1613, 1967, 1998, 1951, 2043, 4218, 4219, and 4220.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCHORD, MEYER, AND AITCHISON.

MEYER, Commissioner:

A proposed report in this proceeding was served upon the parties, and exceptions were filed by the complainant.

The complainant is a mutual association of shippers and receivers of freight at Helena, Ark.

In No. 9492 complainant brings in issue defendants' carload rates on flour and certain other commodities to Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., and points taking the same rates, alleging that those rates are unreasonable, unjustly discriminatory, unduly prejudicial to Helena and unduly preferential of Memphis, Tenn., Little Rock and Pine Bluff, Ark., and other near-by jobbing points.

The complaint of No. 10032 involves the class rates to Helena from points in New York, Pennsylvania, Ohio, Kentucky, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, and Missouri. By amendment to the original complaint class rates from a territory immediately west of Kansas City, Mo., were brought in issue, inasmuch as they are constructed with a fixed relation to Kansas City rates. The class rates are alleged to be unreasonable, unjustly discriminatory, unduly preferential of Memphis, and also in violation of section 4 of the act. Rates to Helena from Kansas City and related points are said to be greater than the aggregate of intermediate rates basing on Memphis, and rates from the same territory to Memphis are said to be lower than the contemporaneous rates to Helena on traffic moving to Memphis through Helena. Complainant also seeks the establishment of joint rail-and-water rates from the whole territory of origin to Helena in connection with the Inland Navigation Company.

By appropriate amendments the Director, General of Railroads was included as a party defendant in each proceeding and the rates initiated and increased by him under General Order No. 28 effective June 25, 1918, were brought in issue. At complainant's instance a supplemental hearing was held at which testimony was submitted concerning the increased rates, thus completing the record as to present conditions.

The Pine Bluff Traffic Bureau, the Forrest City Grocery Company, and the Wynne Wholesale Grocery Company, located at Pine Bluff, Forrest City, and Wynne, Ark., respectively, intervened for the purpose of protecting their interests in the present rate adjustment or any modification of that adjustment as the outcome of this proceeding.

Portions of various fourth section applications for authority to charge class and commodity rates from points referred to in No. 9492, to Helena lower than rates contemporaneously maintained to intermediate points, and class rates from Kansas City, Mo., and points taking rates made with relation thereto, to Memphis lower than rates contemporaneously maintained to Helena and other intermediate points, were also assigned for hearing.

Most of the evidence submitted deals with the rates from St. Louis, inasmuch as rates from so-called defined territories to Arkansas points are in practically all instances made by adding differentials to the St. Louis rates.

At the outset reference should be made to the relationship of the general issues herein to those presented in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515. In that proceeding the Commission had under consideration the reasonableness and propriety of class rates generally in the territory lying between Missouri River cities and lower Mississippi River crossings. That case also involved commodity rates from Memphis to all southwestern territory concerned therein, but it was agreed by the parties to that case that consideration of those rates should be deferred until the determination of the proper level of the class rates. At the hearing of the instant case complainant's counsel conceded that the issue of the reasonableness of rates to Helena from the western territory could be better treated on the record in the *Memphis-Southwestern Investigation*, and that the primary point for consideration in this case is the relationship of rates to Helena with rates to Memphis.

The fourth section matters involved in the *Memphis-Southwestern Investigation* are very comprehensive and embrace all features of the fourth section applications assigned for hearing in connection with the two cases involved in this report, and were disposed of in that case.

The commodity rates from St. Louis to Helena and Memphis, brought in issue in No. 9492, are shown in the following table:

Commodities.	From St. Louis, Mo., to—	
	Helena.	Memphis
Canned goods (fruits and vegetables), C. L.....	37.5	25
Molasses, glucose, and corn sirup, straight or mixed, C. L., or mixed with sugar.....	37.5	25
Fencing material and woven-wire fencing articles taking same rates, C. L.....	44	31.5
Furniture, N. O. S., fourth class.....	62.5	44
Vegetables and fruits, C. L., viz, apples, onions, potatoes, and cabbages.....	37.5	27.5
Stoves, hollow ware, etc., C. L.....	47.5	35
Bagging, cotton-bale covering, in bales or rolls, C. L.....	21.5	14
Wheat, flour, and articles taking same rates, C. L.....	22.5	14
Corn, corn meal, and articles taking same rates, C. L.....	22.5	14

With the exception of subsequent reference to differences in carload-mixture provisions and minimum weights applicable to traffic to Helena, and to Little Rock and Pine Bluff, the remainder of this report will deal only with the relationship of rates to Helena and to Memphis.

Helena is on the Mississippi River 66 miles south of Memphis and 33 miles farther distant from St. Louis than is Memphis and is served from the west by a branch line of the Missouri Pacific Railroad, formerly the St. Louis, Iron Mountain & Southern Railway, and also by the Missouri & North Arkansas Railroad. From the east it is served by a branch line of the Yazoo & Mississippi Valley Railroad extending from Lula, Miss., to Trotters Point, Miss., and thence by car ferry across the Mississippi River. Helena is in the so-called New Orleans, La., group with respect to rates from St. Louis, which group includes such points as New Orleans, Vicksburg and Greenville, Miss., Baton Rouge, La., and Mobile, Ala.

Memphis is served by 10 lines of railroad from various directions but is not included in any defined group. The short line from St. Louis to Helena does not pass through Memphis. The class rates from St. Louis to Memphis and Helena are as follows:

	Distance.	1	2	3	4	5	6	A	B	C	D
	<i>Miles</i>										
Helena.....	838	112.5	94	81.5	62.5	50	44	31.5	39	31.5	25
Memphis.....	305	81.5	62.5	56.5	44	37.5	31.5	19	32.5	19	15

The issues involved in this case are practically the same, with respect to class rates, as were considered in *Helena Freight Bureau v. M. P. Ry. Co.*, Docket No. 5659, unreported, decided May 4, 1914, wherein the Commission found the rates not to be unduly prejudicial to Helena or unduly preferential of Memphis. That decision was based largely upon the existence of more active river competition at Memphis than at Helena and the fact that the boat rates to Helena were the same as the boat rates to New Orleans and other Mississippi River points, and the water rates were met by the rail lines. The low rates to New Orleans were attributed to competition with ocean lines from New York to New Orleans. Complainant now contends that the river situation has materially changed and that whatever justification formerly existed for the wide spread between the rates to Memphis and Helena is no longer present. The present record discloses changed circumstances which are sufficient to warrant a reconsideration of Helena's relative class-rate adjustment.

The historic facts of the relationship of the rail rates to the river rates are stated in the Commission's report in the above case, as follows:

The cities on the Mississippi River and its tributaries were served by boat lines long before they had through rail transportation. When rail carriers entered the field they found that in order to secure a fair share of the traffic it would be necessary for them to approximate the rates which they found had been established by the boat lines. Although the boat-line rates are not the exact measure of the rail rates they constitute the basis upon which the rail rates are established; and after a series of rate wars, conferences, and compromises, the rates of the rail carriers at river points have settled down to the present basis. While competition is not as active as it was in earlier days, considerable traffic is still carried by the boat lines.

To-day the Railroad Administration operates a boat and barge line known as the Mississippi-Warrior Waterways between St. Louis and New Orleans. At the time of the hearing no stops were made at intermediate river cities because of the lack of adequate terminal facilities. Rates were, however, published in the administration's tariffs to and from Memphis and it appears in the *Memphis-Southwestern Investigation* that landings are now made at Memphis. Helena, it is said, is preparing for the construction of necessary facilities to meet the requirements of the administration in that respect, and since the hearing rates have been published to Helena. The St. Louis-Memphis Transportation Company and the Memphis Barge line, neither under federal control, operate into and out of Memphis, and with few exceptions the rates of the federal lines are the same as those of the independent lines. The administration's tariffs name rates on the various classes from St. Louis to Memphis, as follows:

Class	1	2	3	4	5	6	A	B	C	D
Rate	65	50	45	35	30	25	15	26	15	12

These rates are the same as were published by the rail carriers prior to the advance under General Order No. 28. The rates published from St. Louis to New Orleans are likewise the same as the prior rail rates.

Helena is served by the Helena & Rosedale Packet Company and the Lee line, operating from Memphis, neither of which is under federal control. Complainant asserts that the Lee line operates in common with the St. Louis-Memphis Transportation Company in handling traffic regularly from St. Louis to Helena as well as Memphis. The Inland Navigation Company no longer operates on the Mississippi River, which fact disposes of complainant's request for the establishment of joint rail-and-water rates in connection with that company.

Complainant contends that rates to Helena should bear a closer relationship to rates to Memphis and that Helena should be removed from the New Orleans group. The average distance to points in that group is stated to be 693 miles, computed upon the distance from St. Louis to 320 points. The average distance shown by defendants is 555 miles, which appears to have been based on the distance to but 15 points in the group. The direct-line distance from St. Louis to Helena, as previously stated, is 338 miles, 48.63 per cent of the average distance to the group, stated by complainant. On this showing complainant insists that it is unjust to maintain the present adjustment to Helena.

Complainant urges that the difference in the rates of the boat lines from St. Louis to Memphis and Helena should be the measure of the difference in the rates of the rail carriers to the two points. The record is conflicting regarding the exact boat rates at present applying to Helena, though for purposes of illustration the first-class rate of the boat lines prior to June 25, 1918, from St. Louis to Memphis was said by complainants to be 50 cents and the corresponding rail rate 65 cents. The boat-line rate to Helena was given as 60 cents. Complainant therefore submitted that a reasonable and nonprejudicial rail rate would have been 75 cents, first class, instead of 90 cents. Since the submission of those figures, rail rates have been increased 25 per cent.

At the second hearing complainant presented a supplemental scale computed on differences between boat rates which it argues should measure the difference in Helena rates over Memphis, as follows:

1	2	3	4	5	6	A	B	C	D
8	7	6	5	3	2	1	2	1	1

Witnesses representing wholesale grocery and hardware concerns testified that they receive considerable tonnage which moves to Helena on class rates from the territory of origin involved, in which large primary markets are located; that they are in direct competition with similar dealers located at Memphis and doing a wholesale and jobbing business in the same general distributing territory as the Helena dealers; and that the difference in freight rates in favor of Memphis is a severe disadvantage to them in the marketing of their goods. It is also said that dealers at Memphis can purchase many articles at points in defined territory, bring them to Memphis and forward them by boat to Helena at lower transportation charges than are paid by complainant on through shipments by rail from the same points.

The Forrest City Grocery Company and the Wynne Wholesale Grocery Company argue that their rates, which are or may be higher

than like rates contemporaneously published to Helena, constitute fourth section violations. Any such situation has been disposed of in *Memphis-Southwestern Investigation, supra*. The reasonableness of rates to Forrest City and Wynne, which was the subject of some testimony, is not in issue in the present cases.

For defendants it is stated that there has never existed any relationship between rates to Memphis and Helena from any point named in the complaint, but that the rates to both points have been fixed with due regard to the water competition encountered by the rail carriers at each point; that water competition at Memphis has always been more active and controlling than at Helena; that for many years Memphis has been the terminus of boat lines operating on the Mississippi River and the breaking point for rates to the various landings intermediate to New Orleans; and that the rate structure under complaint has been not only of long standing but involves territory adjacent to the Mississippi River from Memphis to New Orleans and along the Gulf of Mexico as far as Mobile and Pensacola.

It is contended that Helena enjoys subnormal rates by reason of its location; and that had the rail carriers not been forced to establish low rates by reason of the river competition the rates to that point would have been made on the same basis as those to interior towns approximately equidistant from St. Louis and Memphis. In this connection rates from Memphis to representative points are shown to be from 10 to 25 per cent higher than those to Helena for similar distances. The argument loses force by the observation that Memphis would likewise not be accorded depressed rates except for its favorable location as a river point and that normal rates to Memphis would mean a normal spread in the rates to Helena over Memphis. On the 10 classes the rates from St. Louis to Memphis and Helena, respectively, are the same to-day as they were 25 years ago, plus the advance of 25 per cent, with the exception of slight changes in class B rates. Defendants argue that complainant's attack upon the existing rate situation is founded entirely upon the relative distances from St. Louis to Memphis and Helena and disregards the forceful considerations of water competition met by the rail carriers.

Defendants also set up the existence of commercial or market competition with respect to Memphis traffic as justifying, in a measure, lower rates than to Helena. As an instance, soap, manufactured extensively at Kansas City, Mo., moves to Memphis over the St. Louis-San Francisco Railroad, 484 miles. That commodity is also produced in volume at Louisville, Ky., and reaches Memphis over the Louisville & Nashville Railroad, approximately the same distance. Other illustrations are shown in the record. Defendants assert that they

have been unable to ignore this element inasmuch as carriers are still competing with each other in serving producing markets regardless of the fact that they are now united under federal control. This character of competition they state, is much less pronounced at Helena.

The operation of the independent boat-line service between St. Louis and Memphis and between Memphis and Helena is conspicuously irregular in contrast with the service of the earlier days. Instead of maintaining controlling competition which the rail carriers are forced to meet the situation to-day is that the independent boat lines remaining are struggling against the competition of the rail lines. Water competition is no longer a justification for the wide difference in rates to Memphis and Helena from St. Louis and other points or for retaining Helena in the New Orleans group.

In the *Memphis-Southwestern Investigation, supra*, in passing upon fourth section applications we held that water competition was not now a sufficient justification for rates between points on the Mississippi River lower than rates contemporaneously maintained at intermediate points. If water competition is no longer a controlling element, the difference between the water-line rates from St. Louis to Memphis and Helena does not appear to be a proper measure of the difference in rates. Complainants urge that in the absence of water competition the differences in rates based on certain mileage scales applicable in this territory would produce smaller differences.

Our report in the case referred to indicates that as a result of the denial of the fourth section applications of the carriers, further study must be made of the whole situation with respect to the rates to Memphis and points intermediate thereto and points in the vicinity thereof before a final solution of the rate situation can be reached. The present adjustment as above indicated is unduly prejudicial to Helena and preferential of Memphis. The examiner in the proposed report recommended a scale of rates from St. Louis to Helena based upon differences in rates to Helena higher than to Memphis beginning with 10 cents, first class. Complainant filed exceptions thereto and sought the lower scale hereinbefore described, but no exceptions were filed by the defendants.

While commodity rates to Helena should be made in line with commodity rates to other points in this territory when such rates are readjusted following the realignment of class rates, the present rates do not accord to Helena an equitable basis, and pending revision of the commodity rates in this general territory, commodity rates should be realigned.

Helena's distributing territory is also common to Little Rock and Pine Bluff and competition is keen between dealers in the three communities. Commodity descriptions in connection with rates to Little Rock and Pine Bluff are not identical with those published for commodity rates to Helena and in some instances more liberal carload mixtures are allowed in rates to the former cities. For example, the rates shown on stoves, hollow ware, etc., to Little Rock and Pine Bluff also apply on gas stoves, ranges, and stovepipe, while the latter commodities move to Helena and Memphis on class rates which are higher than the commodity rates to those points on stoves, hollow ware, etc. In some instances the minimum weights applicable in connection with the rates to Little Rock and Pine Bluff are lower than the minimum weights applying in connection with the rates on corresponding traffic to Helena and Memphis. Rates to Little Rock and Pine Bluff are governed by the western classification and to Memphis and Helena by the southern classification, and the differences in the commodity descriptions and minimum weights in connection with the rates to the former points on the one hand, and to the latter points on the other, result from the fact that the descriptions and minimum weights to Pine Bluff and Little Rock follow the descriptions and minimum weights shown in the western classification, while to Helena and Memphis the commodity descriptions and minimum weights are those shown in the southern classification.

The consolidated classification, providing uniform descriptions for application in connection with rates in western and southern classification territories is now in effect, and the descriptions in connection with commodity rates here assailed should be correspondingly revised, or at least the descriptions should be made the same to Helena and to Little Rock and Pine Bluff.

The distance from Kansas City to Memphis via the short line of the St. Louis-San Francisco Railway is 484 miles and via the Missouri Pacific 540 miles. To Helena the distance via the short line, the Kansas City Southern and the Missouri & North Arkansas, is 514 miles, via the St. Louis-San Francisco and the Missouri Pacific 524 miles, and via the shortest single line, the Missouri Pacific, 552 miles. The rates from Kansas City to Memphis are governed by the western classification and to Helena by the southern classification, and are as follows:

Class-----	1	2	3	4	5	{ A	B	C	D	E
						{ 6	A	B	C	D
Memphis-----	100	81.5	56.5	40	34	40	34	27.5	23	20
Helena-----	144	119	96.5	75	59	52.5	40	56.5	44	—

Complainant states that the average distance via various routes from Kansas City to Memphis and Helena is the same, 565 miles, and contends that the rates to Helena should not exceed the rates

to Memphis. As above indicated, however, the short-line distance to Memphis is somewhat less than that to Helena, and the short-line distance to Helena is over a two-line haul.

From Kansas City as from St. Louis, Helena is in the New Orleans group of destinations. The short-line distance from Kansas City to New Orleans is 868 miles. While the relationship of rates from Kansas City to Memphis and to Helena was not directly in issue in the *Memphis-Southwestern Investigation*, the rates to Memphis were there considered and an increase in the rates was authorized. We there approved rates between Kansas City and Memphis, increased 25 per cent, beginning with \$1.20, first class, and also approved rates between New Orleans and Kansas City beginning with \$1.47, first class, which increased 25 per cent would be \$1.84. It was urged by defendants that Helena by being placed in the New Orleans group is given an advantage on traffic from other points of origin which it would not otherwise have. Even if this were true, it would not justify an undue disadvantage to Helena in the adjustment of rates from Kansas City.

The rates from Kansas City to Memphis are influenced by conditions which are not shown to have influenced the rates from Kansas City to Helena.

In view of the fact that the southwestern rate structure is undergoing a revision, and inasmuch as the present record does not warrant the fixing of definite differences which should obtain in rates from Kansas City to Memphis and to Helena, we shall not at this time enter any order with respect to this relationship. The record is convincing that the application of the same rates from Kansas City to Helena as to New Orleans results in undue prejudice to Helena. The defendants will be expected to provide rates from Kansas City to Helena substantially lower than the contemporaneous rates to New Orleans, and made with due regard to rates to other Arkansas points.

Upon consideration of the whole record, we are of the opinion and find that the class rates from St. Louis and points basing thereon to Helena are and for the future will be unduly prejudicial to Helena and unduly preferential of Memphis to the extent that the rates to Helena exceed the rates to Memphis by more than the following amounts in cents per 100 pounds:

Class	1	2	3	4	5	6	A	B	C	D
Amount.....	10	8.5	7	6	5	4	3	4	3	2

It should be understood that in view of the unsettled condition of the rates in this section the relationship prescribed is to some extent tentative and without prejudice to the rights of either party to request a readjustment in the light of future conditions.

We are further of the opinion that the carload commodity rates from St. Louis and points taking rates basing thereon, hereinbefore referred to, to Helena on canned goods, molasses, glucose, and corn sirup, fencing material, furniture, vegetables and fruits, stoves and hollow ware, bagging, wheat, flour, corn, and corn meal, as hereinbefore described, are and for the future will be unduly prejudicial to Helena. The commodity rates should be realigned to conform to the principles herein announced at the same time that the class rates herein prescribed are published, subject to such further realignment as may be necessary in order that such rates may harmonize with the commodity rates to other points in this territory which may be established in conformity with our findings in the *Memphis-Southwestern Case*.

An appropriate order will be entered.

57 I. C. C.

No. 10670.

ATWOOD REFINING COMPANY
v.
DIRECTOR GENERAL, MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY, ET AL.

Submitted December 29, 1919. Decided February 16, 1920.

Rate of 32.5 cents per 100 pounds charged on shipments of crude petroleum, in tank cars, from Burkburnett, Tex., to Oklahoma City, Okla., in September and October, 1918, found to have been unreasonable to the extent that it exceeded 22.5 cents. Reparation awarded.

Clifford Thorne for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

Complainant is a corporation engaged in refining crude petroleum at Oklahoma City, Okla. By complaint filed May 26, 1919, it prays reparation, alleging that the rate of 32.5 cents charged on 22 tank-car loads of crude petroleum, shipped in September and October, 1918, from Burkburnett, Tex., to Oklahoma City, was unreasonable to the extent that it exceeded 22.5 cents, the rate subsequently established. Rates will be stated in cents per 100 pounds.

The shipments, averaging approximately 66,700 pounds per car, moved over the Missouri, Kansas & Texas Railway and the Missouri, Kansas & Texas Railway of Texas, a distance of 328 miles. Charges were collected in the sum of \$4,769.72, at the applicable rate of 32.5 cents. A 22.5-cent rate was established October 6, 1918, and reduced to 18.5 cents on October 14, 1919.

For complainant it is contended that no traffic conditions existed at the time shipments moved necessitating a rate 10 cents higher than the subsequently established rate. It is shown that there existed a contemporary rate of 22.5 cents from Burkburnett to Okmulgee, Tulsa and Sapulpa, Okla., materially farther distant points; that on refined outbound products to Chicago, Ill., the latter three points take rates 2 cents under Oklahoma City; and that the earnings under a 22.5-cent rate for 328 miles would have exceeded defendants' average earnings on all traffic for the year ended December 31, 1917, for an average haul of 196 miles, by 14.1 per cent per ton-mile and 47.2

per cent per car-mile, loaded and empty. Among other things, an elaborate comparison of petroleum rates in southwestern and western territory indicates that the rate assailed was too high and strongly supports the basis upon which reparation is sought.

The defendants contend that the rate assailed was not unreasonable in comparison with the fifth-class rate of 54 cents contemporaneously applicable from Burkburnett to Oklahoma City; also, that the movement to Tulsa is for the greater part over the main line, and that to Oklahoma City it is, from Atoka, Okla., over a line of light traffic density.

The oil field at Burkburnett began to produce substantial quantities of oil shortly prior to the time these shipments moved, and it would appear that a lower rate was sought but delayed in publication. The present rate is satisfactory to complainant.

AITCHISON, *Chairman*:

The foregoing is the statement of facts as contained in the proposed report of the examiner who heard the case. Our examination of the record verifies its accuracy. No exceptions to the report, which was served upon the parties, have been filed. We adopt the foregoing statement and find that the rate assailed was unreasonable to the extent that it exceeded 22.5 cents per 100 pounds; that complainant made shipments as described, and paid and bore the charges thereon; that it was damaged thereby in the difference between the transportation charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined on this record, and complainant should prepare and submit to defendants for verification a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon the receipt of such a statement we will consider the entry of an appropriate order. No order for the future is necessary.

57 L. C. O.

No. 10293.

THREE STATES TIE COMPANY

v.

**CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.**

Submitted March 3, 1919. Decided February 11, 1920.

Rate on crossties, in carloads, from St. Elmo and other points in Illinois to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, found to have been unreasonable. Reparation awarded.

J. D. Gray for complainants.

K. L. Richmond for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

Complainants are Calvin Washburn, J. T. Lambard, and C. M. Oviatt, copartners, engaged in the lumber business at Hastings, Mich., under the name of Three States Tie Company. By complaint seasonably filed they allege that the rate charged on numerous carloads of crossties, shipped between May and November, 1914, from St. Elmo, St. James, Loogootee, Kinmundy, Cartter, Kell, and Texico, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, was unreasonable, and that the shipments were misrouted. They pray for reparation on the basis of a subsequently established rate of 15 cents per tie, equivalent to approximately 10 cents per 100 pounds. Before creosoting, a tie weighs between 145 and 150 pounds.

St. Elmo is a junction point of the Chicago & Eastern Illinois Railroad, hereinafter called defendant, and the Vandalia Railroad; the other points of origin are on defendant's line from 5.3 to 42.7 miles south of St. Elmo. The shipments were delivered to the defendant, unrouted, between May and September, inclusive, 1914, billed to Chicago with instructions to stop at Terre Haute for creosoting. They moved over defendant's line via Danville, Ill., to Terre Haute, were there creosoted, and were delivered by defendant at destination. The average distance from the points of origin to Chicago, including a backhaul between Danville and Terre Haute, is 375

miles. No specific rate, or tariff provision for creosoting in transit at Terre Haute, was in effect over this route, and charges were assessed at a combination rate, applicable from all of the points of origin, of 15 cents per 100 pounds, equivalent to about 22.5 cents per tie, composed of 6 cents to Terre Haute and 9 cents beyond. In addition, a charge of \$2 per car for switching at Terre Haute was applicable except on the shipments originating at St. Elmo and Kinmundy. In connection with the Vandalia to Terre Haute and defendant's line beyond, about 90 miles shorter than the route used, a joint rate of 8 cents per 100 pounds from St. Elmo and a combination rate of 14 cents from the other originating points, based on St. Elmo, with stop-off at Terre Haute for creosoting, plus switching charges of \$6 per car, would have applied.

At the time of movement a carload rate of 13 cents per tie applied over defendant's line from East St. Louis, Ill., to Chicago, with creosoting in transit at Mount Vernon and Marion, Ill. This rate covered backhauls of 180 and 262 miles, respectively, from Findlay, Ill., through the points of origin of complainants' shipments, to Mount Vernon and Marion, and return, the total hauls being 467 and 549 miles, respectively. The same rate also applied from other Mississippi and Ohio river crossings, including Joppa, Ill., to Chicago, with stop off for creosoting, subject to an additional charge of \$1.50 per car in some cases. Shipments from Joppa, which could be creosoted at East St. Louis under that rate, would move north through the points of origin of complainants' shipments to Findlay, thence southwest to East St. Louis, and thence northeast through Findlay to Chicago.

On May 10, 1915, after the shipments moved, a rate of 15 cents per tie, constructed by the addition of 2 cents to the rate from the river crossings, was established over the route of movement. Defendant's witness testified that this rate would have been established prior to the movement of complainants' shipments if seasonable request had been made therefor. On June 25, 1918, the rate was increased to 19 cents, and on August 23, 1918, to 22 cents, the present rate. Stop-off at Terre Haute for creosoting was and is permitted under these rates, plus switching charges of \$4 per car.

While the rates charged were the same as the lumber rates, it is obvious that lumber would not move to Chicago over such an indirect route. The rate charged and the subsequently established rate of 15 cents per tie yielded 8 mills and 5.33 mills per ton-mile, respectively, and, based upon 28 tons, the average loading of complainants' inbound shipments, 22.4 cents and 15.68 cents per car-mile, respectively.

Defendant's witness testified that its tariff was honeycombed with per tie rates and that the rate of 15 cents per tie was established in order to align the rate attacked with other tie rates in the same general territory, and to place the creosoting plant at Terre Haute on a parity with other creosoting plants in that territory. He further testified that the carriers considered the rate of 13 cents, which applied both as a local and a proportional rate from St. Louis and other Mississippi and Ohio River crossings, was too low for application to local business and that it should have been published only as a proportional rate; that looking at the 13-cent rate purely as a proportional rate, by comparison, the rate of 15 cents per tie subsequently established from the points of origin here involved was a reasonable rate; and that the charges assessed were unreasonable to the extent that they exceeded that rate.

The consignee paid the freight charges and charged back to complainants, and complainants assumed, the excess over the charges that would have accrued at a rate of 8 cents per 100 pounds and a switching charge of \$6 per car.

Upon the facts of record we find that the rate assailed was unreasonable to the extent that it exceeded 15 cents per tie, plus a charge of \$4 per car for the switching at Terre Haute; that complainants made the shipments as described and bore the charges thereon in excess of those accruing at a rate of 8 cents per 100 pounds and a switching charge of \$6 per car; that they were damaged thereby in the difference between the charges so borne and those that would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The foregoing finding renders it unnecessary to consider the question of misrouting.

HALL, *Commissioner*, dissenting:

This is a case of misinformation and misrouting. The complainants, dealers in railroad ties, who had contracted to supply ties to the New York, Chicago & St. Louis Railroad, commonly known as the Nickel Plate, at prices f. o. b. origin, with guaranty by them that the transportation charges to Chicago would not exceed 8 cents per 100 pounds, plus \$6 switching charges at Terre Haute, were shipping ties under that contract from Illinois stations on the Vandalia at the transportation charges named in the guaranty. They desired

to ship also from St. Elmo, junction of the Vandalia with a branch line of defendant, and from local stations on that branch just south of the junction. No joint rates applied via the Vandalia. Before shipping they made inquiries of defendant's local agent at Texico, on this branch, and through him were correctly informed that defendant maintained no through rate from these stations to Chicago via Terre Haute and that the combination on Terre Haute would apply. They were correctly informed also that the local to Terre Haute was 6 cents per 100 pounds. They were incorrectly informed that the local thence was 4 cents, whereas in fact it was 9 cents, and that no switching charges would apply at Terre Haute, whereas a charge of \$2 per car applied except on shipments from St. Elmo and Kinmundy.

Without consulting the tariffs they computed the combination at 10 cents, instead of 15 cents as it was, and concluded to absorb under their guaranty the resulting difference in charges, amounting as they computed to about 1.5 cents per tie. They accordingly shipped to the Nickel Plate at Chicago from St. Elmo and points south on defendant's branch line under billing instructions to stop at Terre Haute for treatment at a designated creosoting plant there, but without specifying rate or routing. It thus became the duty of defendant to route the shipments originating south of St. Elmo over the shorter and cheaper route via St. Elmo and the Vandalia to Terre Haute, thence over defendant's rails to destination.

This was not done. The shipments were moved by defendant over its rails north to Danville, Ill., then south out of line 54 miles to Terre Haute; then, after the creosoting, back 54 miles to Danville and thence to destination where they were delivered to the Nickel Plate, which had bought the ties f. o. b. origin, and which paid the charges assailed. It would have borne, as well as paid; these charges, were it not for the rate guaranty mentioned above, which is said to have been part of the contract of sale. Because of this guaranty clause the excess in transportation charges over 8 cents per 100 pounds plus \$6 per car for switching at Terre Haute was deducted by the Nickel Plate in settling for the ties and was borne by complainants. Their claim for reparation is thus such claim as the Nickel Plate would have had except for this contract which is not in evidence, although one of complainants testified as to the substance of the guaranty clause.

The rates applied over the route of movement to and from Terre Haute were the same as on lumber. Some months later defendant established a through rate of 15 cents per tie, substantially equivalent to 10 cents per 100 pounds, over the route of movement, with switching charge of \$4 per car at Terre Haute, and complainants seek retroac-

tive application of this basis to the shipments made. The majority report finds that the rates collected were unreasonable to the extent that they exceeded this subsequently established basis, which yields ton-mile earnings of 5.33 mills, and award reparation accordingly.

As I read the record it does not support the finding. We have uniformly held that rates on ties should not exceed those on lumber of the same kind of wood, and, tried by this customary test, the rates applied were not unreasonable. They were the same as the lumber rates, and there is no showing that these were unreasonable. Their ton-mile yield was 8 mills. Practically the only evidence of unreasonableness is to be found in the admissions of defendant, first made years ago in its application on our special docket for leave to pay reparation down to that basis, and later, after we denied that application, repeated in the testimony of its assistant general freight agent on the hearing of this complaint.

Admission by the carrier of past unreasonableness and readiness to pay reparation is significant but not controlling. If it were, every such application on our special docket must be granted as of course, our consideration thereof would be an idle formality, and rebates could find a ready disguise. Such admission by a carrier's witness on the stand may have greater weight because of the opportunity there afforded to sift his testimony, however little the aid to be expected from cross-examination by the complainant. It still is not controlling.

This official repeated on the stand the admission, previously made on our special docket, that the rates charged were unreasonable to the extent that they exceeded the lower through rate, with transit at Terre Haute, which he subsequently established. He also testified that the reason for instituting the lower rate was that complainants had come to defendant some time after the shipments moved and asked whether the quotation of 10 cents per 100 pounds made by defendant's agent at Texico could not be protected, that after looking into it he felt that the shippers had some ground of complaint, and that Terre Haute as compared with other creosoting points served by defendant should be "put on the map," but added that defendant was "honeycombed with tie rates," that he himself was "absolutely opposed to per tie rates, that they were iniquitous, that we should get away from them. In other words, that we should not handle ties any cheaper for the railroads than we handle lumber for any other people."

Despite this individual view he made the reduction to 15 cents per tie, leaving the lumber rate where it was. All rail carriers are large purchasers of ties, defendant no less than the Nickel Plate, and all make favorable terms from dealers in ties, as well as participation in their shipments to other carriers. In the absence of

any showing why these ties should take lower rates than lumber, or that the lumber rates were unreasonable, I fail to see how we can hold that in this case the rates applied on the ties were unreasonable, or award reparation on that ground. The comparisons drawn with the rate of 13 cents per tie from East St. Louis to Chicago, practically the same as the lumber rate of 8 cents per 100 pounds, prove little when it appears that the East St. Louis rate was essentially a proportional rate, since published as such, and yielded ton-mile earnings of 3.2 mills, or 3.7 mills, according to route.

The fact that a transit arrangement is involved can not preclude a finding of unreasonableness or an award of reparation therefor, if the record will support the finding. In *Meeds Lumber Co. v. A. C. Ry.*, 39 I. C. C., 337, after rehearing we affirmed the findings in our original report, unreported, in which we said:

The Commission will not, however, sanction the retroactive application of transit privileges, except upon a showing of unreasonableness or of damage arising out of undue prejudice or discrimination.

In the three other cases cited in the majority report it was shown to our satisfaction that the rates charged were unreasonable. In the case before us proof of unreasonableness other than admission by defendant is lacking, and no allegation or proof of unjust discrimination or undue prejudice is made.

We do not ordinarily give retroactive effect to transit provisions in the absence of a showing of unjust discrimination, or undue prejudice, and damage thereunder. *Freeman v. S. Ry Co.*, 42 I. C. C., 736; *Burritt Co. v. C. P. Ry. Co.*, 45 I. C. C., 195; *Eagle Pass Lumber Co. v. G. H. & S. A. Ry. Co.*, 48 I. C. C., 693.

The facts in this case are not unlike those in *Freeman v. S. Ry. Co.*, *supra*. There certain shipments of crossties moved over an interstate route from Evansville, Ind., to Anderson, Ind., and were stopped at Terre Haute for creosoting. Charges were assessed on rates of 8 cents per tie to Terre Haute and 8.5 cents per 100 pounds beyond. A joint rate of 8 cents per 100 pounds was in effect from Evansville to Anderson over the route of movement, but creosoting in transit was not permitted. Between the same points, by another route, a like rate of 8 cents per 100 pounds applied, plus a switching charge at Terre Haute, under which creosoting there in transit was permitted. Subsequently the same transit arrangement was established via the route of movement. There, as here, it was contended, not that the local rates to and from Terre Haute were intrinsically unreasonable, but that the charges were unreasonable because no provision was made for transit. We said:

Following *Swift & Co. v. M. & O. R. R. Co.*, 39 I. C. C., 701, and upon the facts disclosed we can not sanction the retroactive application of a transit arrangement. 57 I. C. C.

rangement unless to remove unjust discrimination. Discrimination is not alleged or shown. The complaint will therefore be dismissed.

In my opinion like finding should be made here, coupled with a finding of misrouting, and award of reparation therefor against the offending carrier to the basis of the rates and charges contemporaneously in effect over the route by which these shipments should have moved. The two shipments originating at St. Elmo were not misrouted. Complainants might have delivered them there to the Vandalia, and made their election in delivering them to defendant.

57 I. C. C.

No. 10705.

DAVID J. WARD AND ARTHUR M. NORTHRUP, PART-
NERS TRADING AS THE JOHN BOWDEN COMPANY,

v.

DIRECTOR GENERAL, NEW YORK, PHILADELPHIA &
NORFOLK RAILROAD COMPANY, ET AL.

Submitted January 4, 1920. Decided February 11, 1920.

Following *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 50 I. C. C., 327, and 52 I. C. C., 249, rates on mine props from points of origin in the eastern shore territory of Virginia, Delaware, and Maryland to Shenandoah, Pa., and points taking same rates found to have been unreasonable. Reparation awarded.

Alexander M. Jackson for complainants.

Henry Wolf Bicklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

Complainants are engaged at Ashley, Pa., and Salisbury, Md., in buying and selling lumber. By complaint filed June 10, 1919, as amended, they allege that the rates charged by defendants during the period from June 9, 1917, to June 9, 1919, for the transportation of numerous carload shipments of mine props from points in Virginia, Delaware, and Maryland, in what is known as "eastern shore territory," to destinations in the anthracite-coal region of Pennsylvania were unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the act to regulate commerce. Reparation is asked. Rates are stated in cents per 100 pounds.

The complaint grows out of the original and supplemental decisions in *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 50 I. C. C., 327, and 52 I. C. C., 249. Reference to those reports shows that the rates on mine props from points in the eastern shore territory to Shenandoah, Pa., and other points in the anthracite-coal region of Pennsylvania, prior to February 23, 1915, were generally speaking, 12 cents from points as far south as Exmore, Va., and 14 cents from points south of Exmore to and including Norfolk, Va. Following *The Five Per Cent Case*, 32 I. C. C., 325, they became 12.6 cents and 14.7 cents, respectively. These rates were found to be
57 I. C. C.

unreasonable to the extent that they exceeded 10.5 cents from points north of New Church, Va., and 12.6 cents from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive. Reparation was denied in the original report, but upon complainants' petition for a modification of the finding in that respect the proceeding was reopened for reconsideration on the record as made. In the supplemental report the rates on mine props from points north of New Church were found to have been unreasonable to the extent that they exceeded 10.5 cents prior to March 25, 1918, and 11.5 cents between March 25 and May 17, 1918; and from New Church and points south thereof to and including Cape Charles to the extent that they exceeded 12.6 and 13.6 cents, respectively. The increase of 1 cent from each group subsequent to March 25, 1918, represents the increase permitted under *The Fifteen Per Cent Case*, 45 I. C. C., 303. Upon reconsideration of the record reparation on the above basis was awarded.

The complaint in the proceeding here under consideration was filed on June 10, 1919, and asks reparation on all shipments that moved during the two years prior thereto. At the hearing complainants offered no evidence bearing on the reasonableness of the rates charged, but rested their case wholly on the original and supplemental decisions above referred to. The first order therein required the establishment on or before August 15, 1918, of the rates found reasonable; but prior to its effective date, and as of June 25, 1918, the rates found to be unreasonable were increased on the basis provided for in General Order No. 28 of the Director General of Railroads. The rates charged since August 15, 1918, are the reasonable, maximum rates prescribed by the Commission on which have been superimposed the increases provided for in General Order No. 28, and no testimony has been introduced tending to show them unreasonable or unjustly discriminatory. The Delaware & Hudson and Delaware, Lackawanna & Western companies, defendants herein, were not parties defendant in *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, *supra*, and rates to destinations on those lines were therefore not affected by the orders in that proceeding. No evidence was introduced in the present record respecting rates to points located on those two lines.

Defendants offered testimony showing that the rates on mine props from the territory of origin here involved are in some instances lower than the rates on lumber between corresponding points; that they are lower than rates for shorter distances on the same commodity from other points on the rails of the Pennsylvania Railroad and connecting lines; and that since the testimony in the former case was taken expenses of operation have largely increased.

AITCHISON, *Chairman*:

The foregoing statement of facts was prepared by our examiner who heard the evidence. The defendants filed exceptions to the findings suggested by the examiner, and also except to the failure of the examiner to incorporate in his proposed report more definite and specific statements as to the increases in the cost of transportation which took place during the period the shipments in question moved. In support of the exceptions the defendants reargue the issues decided adversely to them in *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, *supra*. In *Armstrong v. N. Y., P. & N. R. R. Co.*, 57 I. C. C., 35, we followed our finding in the cited case and awarded reparation on similar shipments moving between the same points. The unreasonableness of the rates, however, must be regarded as settled by our decisions in the cases cited. Upon consideration of the entire record we adopt the foregoing statement of facts as our own, and find, as recommended by the examiner, that the rates charged on complainants' shipments of mine props from points in the eastern shore territory to Shenandoah and points taking the same rates located on the lines of the Pennsylvania Company, Central Railroad of New Jersey, Philadelphia & Reading, and Lehigh Valley railroads in the state of Pennsylvania, were during the period of movement and prior to March 25, 1918, unreasonable to the extent that they exceeded 10.5 cents per 100 pounds from points north of New Church, viz, Loretto and Ocean City, Md., Ellendale, Del., Franklin City, Va., and points taking the same rates, and 12.6 cents per 100 pounds from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive; that between March 25 and June 25, 1918, they were unreasonable to the extent that they exceeded the above-named rates by more than 1 cent per 100 pounds; and that from June 25, 1918, to August 15, 1918, they were unreasonable to the extent that they exceeded rates of 11.5 and 13.6 cents, increased on the basis provided for in General Order No. 28 issued by the Director General.

We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Upon receipt of a statement prepared in accordance with rule V of our Rules of Practice we will consider the entry of an order awarding reparation. A check has been made of numerous shipments involved in the complaint, from which it appears that some are barred by the statute of limitations; others apparently were overcharged, no basis, for example, being found for the rate of 20 cents assessed on shipments from

Hebron, Berlin, and Parsonburg; in other cases undercharges occur, and in still other instances the rates collected were the reasonable maximum rates prescribed by the Commission.

No reparation will be awarded on shipments moving subsequent to August 14, 1918, and on shipments destined to points on the rails of the Delaware, Lackawanna & Western and Delaware & Hudson companies.

57 I. C. C.

No. 8875.¹

D. C. ARMSTRONG

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.

Submitted October 16, 1919. Decided February 11, 1920.

Rates on mine props, in carloads, from points in Maryland, Virginia, and Delaware to points in Pennsylvania found to have been unreasonable. Reparation awarded.

*R. A. Koontz for complainants**Henry Wolf Biklé for defendants.***REPORT OF THE COMMISSION.**

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

These cases were heard together and will be disposed of in one report. The complainants are corporations and individuals engaged in the lumber business at Pocomoke, Md., and Pottsville, Pa. By complaints filed May 13, May 20, and June 1, 1916, they allege that the rates charged on certain shipments of mine props, in carloads, between August 1, 1914, and March 30, 1916, both inclusive, from points in Maryland, Virginia, and Delaware to points in Pennsylvania, were unreasonable and unjustly discriminatory to the extent that they exceeded 10.5 cents per 100 pounds. Reparation and reasonable rates for the future are asked. At the hearing complainants abandoned their prayer for future rates, the only testimony offered by them being with respect to the rates charged on the shipments in question. Rates are stated in cents per 100 pounds.

The points of origin are in the so-called eastern shore territory, and the destinations in the anthracite-coal regions of Pennsylvania. Generally speaking, the rate applicable on the shipments that moved prior to February 23, 1915, from points north of Exmore, Va., was 12 cents and from points south of Exmore, 14 cents. On that date,

¹ This report also embraces No. 8875 (Sub-No. 1), *Same v. Same*; No. 8876, *L. T. Brandon v. New York, Philadelphia & Norfolk Railroad Company et al.*; No. 8876 (Sub-No. 1), *Lycoming Timber & Lumber Company v. Same*; and No. 8876 (Sub-No. 2), *Virginia Pine Timber Company v. Same*.

following *The Five Per Cent Case*, 32 I. C. C., 325, these rates were increased to 12.6 cents and 14.7 cents, respectively. In some instances the rates charged exceeded and in other instances were less than the rates applicable. There are, therefore, apparently overcharges on some of the shipments and undercharges on others.

In a similar case, *Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co.*, 52 I. C. C., 249, decided February 17, 1919, involving rates charged on shipments from and to the points here in question, between July 21, 1913, and August 28, 1915, we found that:

the rates in effect on mine props during the period of movement and prior to March 25, 1918, were unreasonable to the extent that they exceeded 10.5 cents per 100 pounds from points north of New Church, viz; Loretto and Ocean City, Md., Ellendale, Del., Franklin City, Va., and points taking same rates, and 12.6 cents per 100 pounds from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive; and that between March 25 and May 17, 1918, they were unreasonable to the extent that they exceeded the above-named rates by more than 1 cent per 100 pounds, the increase permitted under *The Fifteen Per Cent Case*.

In *Bowden Co. v. Director General*, 57 I. C. C., 31, decided concurrently herewith, we followed our finding in the cited case and awarded reparation on similar shipments between the same points.

Upon the record and following the cases cited we find that the rates assailed are not shown to have been unjustly discriminatory but we do find that they were unreasonable to the extent that they exceeded 10.5 cents per 100 pounds from points north of New Church, Va., viz, Loretto and Ocean City, Md.; Ellendale, Del.; Franklin City, Va.; and points taking the same rates, and 12.6 cents per 100 pounds from all points on the New York, Philadelphia & Norfolk Railroad in Virginia, New Church to Cape Charles, inclusive; that complainants paid and bore the charges thereon; and that they were damaged thereby and are entitled to reparation in the difference between the charges paid and those that would have accrued at the rates herein found reasonable, with interest. The exact amount of reparation due can not be determined on the present record, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon the receipt of such statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 10105.
PADUCAH BOARD OF TRADE ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY AND
DIRECTOR GENERAL.

Submitted March 6, 1919. Decided February 10, 1920.

Rate of 22.5 cents per 100 pounds charged on 19 carloads of staves from Brilliant, Ala., to Paducah, Ky., found to have been unreasonable to the extent that it exceeded 14.5 cents. Reparation awarded.

C. W. Craig for complainants.

E. A. Smith for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY DIVISION 3, COMMISSIONERS MCHORD, HALL, AND EASTMAN.

By DIVISION 3:

The complainants herein are the Paducah Board of Trade, a corporation organized in the interest of shippers and manufacturers at Paducah, Ky., and the Paducah Cooperage Company, a corporation engaged in buying and selling cooperage stock at Paducah, hereinafter termed complainant. By complaint filed March 14, 1918, as amended, they allege that the rate of 22.5 cents per 100 pounds charged by the Illinois Central Railroad, hereinafter referred to as defendant, for the transportation of 19 carloads of staves from Brilliant, Ala., to Paducah, shipped during January and April, 1918, was unreasonable and unduly preferential of Cairo, Ill. By supplemental complaint filed March 7, 1919, the Director General of Railroads was made a party defendant, but no answer was filed by him nor was further hearing asked or had. Reparation only is sought. Rates are stated in cents per 100 pounds.

Brilliant is a local point on a short line of the Illinois Central connecting with the St. Louis-San Francisco Railway, hereinafter called the Frisco, at Winfield, Ala. Apparently the shipments could have moved over either of two routes—viz, Illinois Central to Winfield, thence Frisco to Jasper, Ala., and thence Illinois Central to destination, or Illinois Central to Winfield, thence Frisco to Aberdeen, Miss., thence Illinois Central to destination, and it may have

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been that the Illinois Central had trackage rights over the rails of the Frisco from Winfield to Jasper or from Winfield to Aberdeen. The record is not conclusive as to the route used or as to whether the Frisco, which is not a party defendant, participated in the transportation. However, this is immaterial, because the shipments moved during federal control and the Director General is liable for any injury we may find to have resulted from unreasonableness in the rate attacked.

Charges were collected at the applicable class N rate of 22.5 cents. A commodity rate of 15.5 cents was contemporaneously in effect on staves, in carloads, from Brilliant to Cairo by way of the Illinois Central, Winfield, Frisco, Aberdeen, and Illinois Central, and on April 22, 1918, after the shipments moved, a commodity rate of 14.5 cents was made applicable from Brilliant to Paducah over the same route. Paducah is on the south bank of the Ohio River about 43 miles from Cairo, on the north bank. Shipments from Brilliant to Paducah and Cairo move over the same rails as far as Fulton, Ky., at which point the Illinois Central's lines to the two destinations diverge. The distances from Fulton are 43 miles to Paducah and 49 miles, including a bridge haul, to Cairo.

It was testified for complainants that when the shipments moved rates on staves from points in the vicinity of Brilliant were generally 1 cent higher to Cairo than to Paducah. For example, it was shown that the rate from Hackleburg, Vina, and Hodges, Ala., on defendant's line, to Paducah was 12 cents and to Cairo 13 cents, and that from Winfield the rate via the St. Louis-San Francisco Railway in connection with the defendant was, to Paducah 14 cents, and to Cairo 15 cents.

Defendant introduced no evidence in defense of the rate charged. Its witness stated that following our finding in *Rates on Lumber, from Southern Points*, 34 I. C. C., 652, decided July 12, 1915, before these shipments moved, the carriers operating in the south published commodity rates on lumber and staves from that territory to points on the north bank of the Ohio River which were usually 1 cent higher than rates to points on the south bank; but that apparently no staves were shipped from Brilliant to Paducah prior to the shipments here considered and consequently no reason had appeared for the publication of a commodity rate on that traffic. Brilliant was not specifically included as a point of origin in the case cited.

We find that the rate assailed was unreasonable to the extent that it exceeded 14.5 cents per 100 pounds. We further find that complainant Paducah Cooperage Company made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would

have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record. Complainant Paducah Cooperage Company should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.



No. 10610.

ASSETS REALIZING MINES CORPORATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted October 9, 1919. Decided February 10, 1920.

Rate legally applicable on a carload of secondhand mining machinery, from Millers, Nev., to Blythe Junction, Calif., found not to have been unreasonable. Complaint dismissed.

L. G. Wilson and F. B. Cramer for complainant.

G. H. Baker and E. W. Camp for Director General of Railroads and Atchison, Topeka & Santa Fe Railway Company.

Frank F. Oster for Tonopah & Tidewater Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

By complaint seasonably filed complainant alleges that the rate charged on a carload of secondhand mining machinery shipped January 1, 1917, from Millers, Nev., to Blythe Junction, Calif., was unreasonable. Reparation only is asked. Rates are stated in amounts per 100 pounds.

The shipment moved over the Tonopah & Goldfield, Bullfrog-Goldfield, and Tonopah & Tidewater railroads through Goldfield and Beatty, Nev., to Ludlow, Calif., and Atchison, Topeka & Santa Fe Railway beyond, 387 miles. Charges were collected based on 54,320 pounds at a combination class A rate of \$1.79, governed by the 57 I. C. C.

western classification, made up of \$1.45 to Ludlow and 34 cents beyond. This 34-cent rate had been canceled effective December 30, 1916, and the rate legally applicable beyond Ludlow was a combination composed of class A rates of 23 cents to Cadiz, Calif., and 25 cents to destination, making a through rate of \$1.93. Accordingly, the shipment was undercharged 14 cents per 100 pounds. Complainant contends that the through rate charged was unreasonable to the extent that the \$1.45 factor to Ludlow exceeded a commodity rate of 75 cents, established January 22, 1918.

Aside from the showing of the subsequent reduction of the \$1.45 component, the only evidence presented by complainant in support of its allegation of unreasonableness was that at the time of the movement a commodity rate of 75 cents was in effect on second-hand mining machinery, in carloads, from Millers to San Francisco, Calif.; that the carriers generally maintained class and commodity rates from the Goldfield and Tonopah, Nev., district to San Francisco and Los Angeles, Calif., on a parity, the rates to Los Angeles being applied as a maximum at Ludlow.

On behalf of defendants, it was stated that the defendant lines operating in the Goldfield, Millers, and Tonopah mining district have never been strong financially; that their maintenance has always been burdensome, due to the heavy cost of construction, sparsity of traffic, and expensive operation; that these lines were built primarily to serve this mining district, and flourished only so long as did the mining industry; that since the industry died out these lines have barely existed; that rates in this territory, therefore, are properly higher than where traffic and operating conditions are more favorable; and that the rate assailed was not unreasonable.

This shipment resulted from the abandonment of the mines at Millers, and there has been no other movement of this kind from Millers to Blythe Junction either before or since the one under consideration. In the *Goldfield Cases*, 34 I. C. C., 360, decided June 17, 1915, involving the reasonableness of class and commodity rates from various points in the United States to points in Nevada, we had under consideration both class and commodity rates from representative California and eastern points to Tonopah and Goldfield, including a class A rate of \$1.45 from San Francisco and Los Angeles. We found in the cases cited that the rates assailed were not shown to have been unreasonable and dismissed the complaints, and at page 373 of our report we said:

1. The Tonopah & Goldfield, Las Vegas & Tonopah, and Bullfrog-Goldfield railroads and that portion of the Tonopah & Tidewater Railroad north of Ryan, Calif., have almost no traffic whatever on which to rely except the traffic in and out of Tonopah and Goldfield.

2. The revenues which have been derived from traffic on these roads from the date of their construction to the present time have not been sufficient to afford any reasonable profit to the builders of any of these roads.

3. These lines operate over a mountainous and barren country with severe grades and difficult operating conditions.

4. The scale of wages paid to employees is higher than in many other parts of the country.

5. The investment in railways serving a territory of the character here described is of a temporary character, and the rates applied for the transportation of persons and property over such lines are not necessarily unreasonable, although higher than the rates for like distances in other parts of the country.

6. The immediate rewards from investments in such railroads may reasonably be higher than those resulting from the construction of railways for the service of other more stable communities.

On behalf of defendants it was further stated that, due to the almost complete abandonment of mining in the territory referred to, the financial condition of the lines above mentioned was much worse when this shipment moved than when the *Goldfield Cases*, *supra*, were decided.

We find that the rate legally applicable was not unreasonable. An order dismissing the complaint will be entered.

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No. 10572.

PROCTER & GAMBLE COMPANY

v.

DIRECTOR GENERAL, ALABAMA GREAT SOUTHERN
RAILROAD COMPANY, ET AL.

Submitted July 17, 1919. Decided February 12, 1920.

Rate on soya-bean oil in tank-car loads from Los Angeles, Calif., to Ivorydale, Ohio, found to have been unreasonable. Reparation awarded.

Hugo Ignatius for complainant.

O. W. Dynes and *G. E. Stolp* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

BY DIVISION 3:

The complainant corporation manufactures soap, soap powder, and lard substitutes, and refines vegetable oils at Cincinnati, Ohio. By complaint filed April 14, 1919, it alleges that the rate of \$1.80 charged by defendants on two tank-car loads of soya-bean oil shipped August 27 and September 4, 1917, from Los Angeles, Calif., to Ivorydale, Ohio, a point within the switching limits of Cincinnati, was unreasonable and unduly prejudicial. Reparation only is asked. Rates are stated in amounts per 100 pounds.

The shipments moved over the line of the Southern Pacific Company to El Paso, Tex., Galveston, Harrisburg & San Antonio Railway, Texas & New Orleans Railway, Louisiana Western Railroad, and Morgan's Louisiana & Texas Railroad & Steamship Company to New Orleans, La., and New Orleans & Northeastern Railroad, Alabama Great Southern Railroad, Cincinnati, New Orleans & Texas Pacific Railway, and Southern Railway to destination. The minimum applicable was the full shell capacity of the tank at an estimated weight of 7.8 pounds per gallon as provided in the governing western classification. On this basis the shipments, which moved in cars with tank capacity of 7,958 and 8,067 gallons, respectively, aggregated 124,995 pounds. Charges were collected at the applicable fifth-class rate of \$1.80, but freight bills submitted subsequent to

the hearing and not properly in evidence indicate that weights somewhat less than the minimum were used.

Complainant asks reparation on the basis of a rate of 58 cents contemporaneously in effect on domestic shipments of crude coconut oil in tank-car loads from and to these points and on import shipments of coconut oil and soya-bean oil in tank-car loads to Ivorydale from Pacific coast ports, including Wilmington, Calif., 20 miles south of Los Angeles, and about 2.5 miles from San Pedro, Calif.

The domestic rate on crude coconut oil to Ivorydale from Pacific coast ports, including Wilmington, and also from Los Angeles, became effective November 25, 1915, and remained in effect until June 24, 1918, when it was increased to 65 cents. On June 25, 1918, it was increased to 81.5 cents under General Order No. 28 issued by the Director General of Railroads, and on July 1, 1918, the present rate of \$1.125 was established. On January 21, 1919, this rate was also made applicable on soya-bean, china-wood, silk-worm, and other oils.

The 58-cent import rate from Wilmington and other Pacific coast ports to Ivorydale was established December 12, 1913, on soya-bean oil and May 11, 1915, on coconut oil. It remained in effect until June 25, 1918, when all import rates were canceled by the Director General, rendering the domestic rates applicable. On June 25, 1918, the only rate on soya-bean oil in tank-car loads from and to the points in question was the fifth-class rate of \$2.25, which had been made by the addition of 25 per cent to the \$1.80 rate legally applicable on June 24. On July 1, 1918, import commodity rates were republished and a rate of \$1.125 established on the following oils: Soya-bean, coconut, silk-worm, china-wood, and other vegetable oils, from Pacific coast ports, including Wilmington, to Ivorydale. On May 29, 1919, this rate was reduced to 90 cents. This is still in effect.

When the shipments moved the value of soya-bean oil was about 13.5 cents per pound, and of coconut oil 14 to 15 cents per pound. Complainant's witness testified that soya-bean oil is used for the same purposes as many other vegetable oils, and urged particularly that the rate assailed was relatively unreasonable inasmuch as it was higher than that contemporaneously applicable on coconut oil. Coconut oil for domestic shipment from the Pacific coast is usually produced from imported coconut meat crushed at the ports, and when these shipments moved the domestic and import rates were the same.

The \$1.80 rate earned 12.7 mills per ton-mile and on the basis of the weight of the shipments averaged about 39.6 cents per car-mile for a total haul of about 2,839 miles. The rate sought would yield

about 4 mills per ton-mile and on the basis of these shipments would average about 12.7 cents per car-mile. Complainant pointed out that for the year ended December 31, 1917, the Southern Pacific's average haul on all traffic was 323 miles, with average ton-mile earnings of 9 mills, and that the Southern Railway's average haul on all traffic for the same period was 176 miles with the same average ton-mile earnings.

The defendants contended that when the shipments moved the 58-cent rate on both import and domestic shipments of coconut oil was less than a reasonable rate, and that the volume of movement of soya-bean oil was not sufficient to warrant the establishment of a commodity rate. They introduced testimony to the effect that this movement was an unusual one, and that if it had not been for the war conditions the soya beans from which this oil was extracted would not have come to this country.

The rate on soya-bean oil from Pacific coast points, and from Los Angeles, to Ivorydale and practically all eastern territory is the same as that on coconut oil at the present time. In *Southport Mill v. Director General*, 55 I. C. C., 154, we recently found that the rates on various other vegetable oils, including copra and palm-kernel products, from New Orleans and Baton Rouge, La., to certain destinations east of the Missouri River were unreasonable to the extent that they exceeded the rates contemporaneously applicable on similar products of cotton seed, and awarded reparation.

The rate on soya-bean oil should not exceed the rate on kindred vegetable oils shipped in the same manner between these points. We are not convinced, however, that a rate of 58 cents would have yielded reasonable earnings on the shipments. Manifestly the fifth-class rate applied was unreasonable in view of the rates cited in comparison. The subsequently established domestic rate of \$1.125 apparently included the increase of June 25, 1918, authorized by General Order No. 28. Without that 25 per cent increase it would be 90 cents. A rate of 90 cents would have earned 6.3 mills per ton-mile and, on the basis of these shipments, 19.8 cents per car-mile.

The record does not establish undue prejudice.

We find that the rate assailed was unreasonable to the extent that it exceeded 90 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined on this record and the complainant should prepare and submit to defendants for verification a statement showing the

details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 10560.

SAN ANTONIO FREIGHT BUREAU

v.

DIRECTOR GENERAL, INTERNATIONAL & GREAT
NORTHERN RAILWAY COMPANY, ET AL.

Submitted August 7, 1919. Decided February 10, 1920.

Defendants' tariff rule providing minimum weights on carload shipments of lignite between points in Texas found to have been unreasonable. Reparation awarded.

U. S. Pawkett for complainant.

John M. King for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

By complaint filed April 9, 1919, the San Antonio Freight Bureau, a corporation, on behalf of certain of its members, namely, the Carr Coal Company, the Merchants Ice & Cold Storage Company, and the San Antonio Portland Cement Company, corporations doing business at San Antonio, Tex., alleges that the charges collected on 46 carloads of lignite shipped during the period between October 7 and October 19, 1918, both inclusive, from Witcher, Worley, and Vogle, Tex., to San Antonio and Cementville, Tex., were unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. Reparation only is asked, including an amount equal to the war-revenue tax on the alleged unreasonable portion of the freight charges. Rates are stated in amounts per ton of 2,000 pounds.

The shipments moved intrastate in open cars over the International & Great Northern Railway. Twenty-four of the shipments were consigned from Worley to the Carr Coal Company at San Antonio and 21 were consigned from Vogle and Witcher to the San Antonio

Portland Cement Company at Cementville. Thirty-one of these shipments, ranging in weight from 63,300 pounds to 79,100 pounds, moved in cars the marked capacity of each of which was 80,000 pounds, and 14, ranging in weight from 47,700 pounds to 56,300 pounds moved in cars the marked capacity of each of which was 60,000 pounds. The legally applicable charges thereon were collected at a rate of \$1 to San Antonio and 90 cents to Cementville based on the marked capacity of the cars used. The remaining shipment, weighing 68,400 pounds, was shipped from Worley consigned to the Merchants Ice & Cold Storage Company at San Antonio and moved in an 80,000-pound car. Charges thereon were collected at a rate of 90 cents based on the marked capacity of the car. There is an undercharge of \$4 on the latter shipment.

The rates are not assailed. Complainant's sole contention is that defendants' tariff rule governing weights, upon the basis of which the charges were collected, was unreasonable to the extent that it provided for weights in excess of actual weights. This rule was established on October 7, 1918, and reads:

Minimum weight 40 tons or 2,000 pounds, except that when the marked capacity of the car is less the marked capacity shall be the minimum.

Defendants' rule in effect prior to October 7, 1918, provided substantially for a minimum of 40,000 pounds; actual weight to govern, if less, and the car loaded to full capacity.

Complainant insists upon the physical impossibility of loading the cars used to their marked capacity. Those marked 60,000 pounds had a space capacity of 888 cubic feet, loaded level full. Of those marked 80,000 pounds some measured 1,200 and the others 1,354 cubic feet. At an estimated weight of 50 pounds per cubic foot, which complainant's witness says slightly exceeds that used at the mines from which the lignite came, these cars loaded level full would carry 44,000, 60,000, and 67,700 pounds, respectively. The heavier loading effected in some instances is attributed to heaping the coal until it began to run over the sides of the cars. On October 23, 1918, after the shipments moved, the rule complained of was canceled and replaced by the following:

In open cars, minimum weight will be the marked capacity of the car except where cars are loaded to their full visible or space-carrying capacity, in which case actual weight will govern.

The latter rule is still in effect and is satisfactory to complainant. Defendants offered no evidence in support of the rule attacked, but question our jurisdiction to award reparation on intrastate shipments. The rule complained of was initiated by the President through the Director General of Railroads and by section 10 of the federal con-

trol act the authority to determine upon complaint the justness and reasonableness of this rule and to award reparation on intrastate shipments moving thereunder is vested in this Commission. *Solvay Process Co. v. D., L. & W. R. R. Co.*, 55 I. C. C., 280.

We find that the tariff rule assailed was unreasonable and that the rule established October 23, 1918, is a reasonable rule for the application of minimum weights on carload shipments of lignite from and to these points of origin and destination. We further find that the Carr Coal Company, the Merchants Ice & Cold Storage Company, and the San Antonio Portland Cement Company made the shipments as described and paid and bore the freight charges thereon; that they have been damaged to the extent that the charges paid exceeded those which would have accrued if the rule herein found reasonable had been in effect; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Following *Zelnicker Supply Co. v. S. Ry. Co.*, 53 I. C. C., 308, no reparation will be awarded in respect of excess war taxes paid.

57 I. C. C.

No. 10434.

TEXAS COMPANY ET AL.

v.

DIRECTOR GENERAL, PHILADELPHIA & READING
RAILWAY COMPANY, ET AL.

Submitted October 15, 1919. Decided February 13, 1920.

Reparation awarded for demurrage charges unlawfully collected at Chester, Pa., on seven tank cars of gasoline from Sistersville, W. Va., to Marcus Hook, Pa.

James L. Nesbitt for complainants.

W. F. Kinter for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, DANIELS, AND WOOLLEY.

By DIVISION 1:

The complainants, the Texas Company and the Kuhne-Libby Company, are corporations engaged in the production and sale of petroleum and its products, with offices in New York City. By complaint seasonably filed it is alleged that demurrage charges collected at Chester, Pa., on seven tank-car loads of gasoline shipped during January, 1917, from Sistersville, W. Va., to Marcus Hook, Pa., were unlawful. Reparation is sought. The case is submitted on an agreed stipulation of facts.

The shipments were consigned from Sistersville to Kuhne-Libby Company at Marcus Hook between January 13 and 15, 1917, on billing which specified the following routing: "B. & O.; Cumberland Valley; P. & R.; P. B. & W."

Marcus Hook is located about 2 miles south of Chester, on the Philadelphia, Baltimore & Washington Railroad, hereinafter referred to as the Pennsylvania, and on the Chester & Delaware River Railroad, a subsidiary of the Philadelphia & Reading Railway, hereinafter referred to as the Reading, which operates it and publishes its rates. In the tariffs of the last-mentioned carrier Marcus Hook is published as being a co-station with Chester and under the jurisdiction of the Chester agent. Chester is the point of interchange from the Reading to the Pennsylvania for traffic destined to Marcus Hook for Pennsylvania delivery.

The shipments arrived at Chester between January 21 and February 2, 1917. The Reading, instead of turning the cars over to the Pennsylvania for delivery at Marcus Hook in accordance with the routing instructions, or advising the delivering carrier of arrival at Chester, itself addressed the notices of arrival to Kuhne-Libby Company, Marcus Hook, and held the cars in its yards at Chester. The Kuhne-Libby Company had no place of business at Marcus Hook and the notices were never received.

The Kuhne-Libby Company, on or about January 17, turned the bills of lading for these shipments over to the Texas Company, which had a gasoline unloading and storage plant at Marcus Hook served by the Pennsylvania. The Texas Company made several telephone inquiries of the Pennsylvania at Marcus Hook concerning the failure of the defendants to deliver the cars, but that carrier apparently had no record of the shipments and the record herein contains no specific information as to the substance of these telephone inquiries.

The agent of the Reading, not receiving any disposition orders for these shipments, duly reported them as unclaimed. The fact that the cars were being held at Chester was finally communicated to Kuhne-Libby Company on March 20, 1917, by letter from the shipper. Kuhne-Libby Company, by letter to the Reading agent received at Chester, March 26, directed that the cars be turned over to the Texas Company at Marcus Hook. This, however, the Reading refused to do until its charges were guaranteed. This was arranged, and the cars were finally delivered March 28, the Kuhne-Libby Company assuming two-thirds, or \$1,078, of the demurrage charges in controversy, and the Texas Company assuming one-third, or \$539.

A through rate on gasoline in tank-car loads was in effect from Sistersville to Marcus Hook, via the route specified in the billing, as above noted. The complainants, relying on *Trexler Lumber Co. v. N. O. & N. E. R. R.*, 49 I. C. C., 121; and *Este Co. v. A. C. L. R. R. Co.*, 34 I. C. C., 469, contend that since a through rate was in effect from Sistersville to Marcus Hook for Pennsylvania delivery, and since the billing was from point of origin to Marcus Hook, and the routing indicated Pennsylvania delivery, it was the duty of the defendants to transport these shipments through to their billed destination, and that the assessment of demurrage for detention short of that destination was unlawful.

Defendants contend that since the application of the joint through rate was limited by their switching absorption tariff to certain industries having sidings at Marcus Hook, in which list the consignee of these shipments, Kuhne-Libby Company, was not included, it was not their duty to turn the cars over to the Pennsylvania, the switching

line, until the consignee had designated an industry included in that list where delivery at Marcus Hook could have been made, or until their charges were paid or guaranteed; that the complainants had not given specific orders to the Pennsylvania identifying these cars, nor was the Pennsylvania notified that the bills of lading had been transferred by Kuhne-Libby Company to the Texas Company, so that even if the Reading had made inquiry of the Pennsylvania for information as to the disposition of these cars, no direct information would have been obtainable, and that such failure under the circumstances can not furnish a ground for the recovery of any loss suffered by complainants because they were equally negligent.

This case is not distinguishable in material fact or principle from *Trexler Lumber Co. v. N. O. & N. E. R. R.*, *supra*, and *Este Co. v. A. C. L. R. R. Co.*, *supra*. In the *Este Case* the Atlantic Coast Line held a car of lumber at Pinners Point, Va., which was shipped on billing specifying Portsmouth, Va., as the destination. The Atlantic Coast Line did not reach Portsmouth, but absorbed the switching charges of the Seaboard Air Line, which did. The car was consigned to Este Company, which had no office at Portsmouth and was unknown to the Atlantic Coast Line. The car was consequently held at Pinners Point and notices sent to Este Company at Portsmouth, which were never received. Este Company had given instructions to the Seaboard agent at Portsmouth to deliver the car upon arrival to the general storekeeper of the Norfolk Navy Yard. Este Company was known to the Seaboard, and if the car had been delivered to that line in the first instance advance payment of the freight charges would have been unnecessary. We held that the Atlantic Coast Line had contracted to carry the shipment to Portsmouth and that it could not hold the car short of that destination for prepayment of charges, and that the demurrage collected as the result of such detention was unlawfully assessed.

In the *Trexler Case*, the Mobile & Ohio held two cars of lumber in its yards at East St. Louis, Ill., which were billed to Madison, Ill., a point in the switching district of East St. Louis. The consignee was unknown to that carrier and the cars were held for prepayment of charges. The Mobile & Ohio did not reach Madison. The agent at Madison had been instructed, however, to deliver the cars to the Kettle River Company at Madison. The rate applicable was a specific joint rate concurred in by the line-haul carriers and by the various lines serving Madison. Madison was not a prepay station. We said:

In view of these tariff provisions and the fact that the shipments were billed through from point of origin to Madison, we are of opinion that it was defendants' duty to transport them through to the billed destination and

that the Mobile & Ohio's action in stopping them at a point short of that destination and assessing demurrage for their detention at that point was unauthorized and unlawful.

In this case the cars were billed to Marcus Hook and the Pennsylvania was specified in the routing as the delivering line. The carriers contracted accordingly and their contract was not performed until the cars were turned over to that carrier and an attempt made by it to deliver them. If the Reading agent, instead of reporting these cars as unclaimed, had observed the billing instructions which put him on notice, and had made inquiry of the Pennsylvania for disposition orders, the telephone communications it had received from the Texas Company apparently would have served their intended purpose and the demurrage charges would not have accrued. *Schuh-Mason Lumber Co. v. M. & O. R. R. Co.*, 46 I. C. C., 365. *American Petroleum Products Co. v. M., K. & T. Ry. Co.*, 53 I. C. C., 427. The fact that the Reading's absorption tariff specified certain industries to and from which the switching charges of the Pennsylvania would be absorbed, can not alter its common-carrier liabilities under its contract as set forth in the bills of lading specifying the limits of the transportation to be performed. The fact that the consignee named in the billing was not an industry included in the list of industries published in its switching-absorption tariff should have put it on notice that the consignee named had made arrangements to take delivery on the tracks of an industry that was so specified. A rate can not be limited in its application to individual shippers. Defendants' switching-absorption tariff, if it is to be held lawful, must be so construed.

Following *Este v. A. C. L. R. R.*, *supra*, and *Trexler Lumber Co. v. N. O. & N. E. R. R.*, *supra*, we find that the demurrage charges assailed were unlawfully collected, and that the shipments were made as described and the unlawful charges paid and borne as stated; that the complainants have been damaged in the amount of such charges; and that the Kuhne-Libby Company is entitled to reparation from the Philadelphia & Reading Railway Company in the sum of \$1,078, with interest, and the Texas Company is likewise entitled to reparation in the sum of \$539, with interest. An appropriate order will be entered.

No. 9822.

DAHLSTROM METALLIC DOOR COMPANY

v.

ERIE RAILROAD COMPANY, DIRECTOR GENERAL,
ET AL.*Decided February 17, 1920.*

Previous report in this case slightly modified in part upon further consideration.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

In our original report in this case, 55 I. C. C., 402, we prescribed for official classification territory various classification descriptions, minimum weights, and ratings to apply to articles listed under the head of building sheet-metal work, and entered an order accordingly. In the *Consolidated Classification Case*, 54 I. C. C., 1, we made recommendations to the Director General with respect to the descriptions and minimum weights on the same articles. Unavoidably almost, through a complication of circumstances not necessary to set forth in detail, it happened that there was conflict between these two cases, so far as door and window casings and frames, made of iron or steel, or wood covered with iron or steel or tin, are concerned. The conclusions we reached in the *Consolidated Classification Case* were based upon a later and more comprehensive record. Upon further consideration of the whole situation we are of opinion that our recommendations in the *Consolidated Classification Case* should be made our findings in this case and that the ratings to apply in connection with those descriptions and minimum weights should be as shown below:

Iron or steel, or wood covered with iron or steel or tin:

Casings, Door or Window:

Ratings.

S. U., in boxes or crates, L. C. L.----- 2

S. U., loose or in packages, C. L., min. wt. 24,000 lbs., subject to

Rule 34----- 5

K. D., in boxes or crates, L. C. L.----- 3

K. D., loose or in packages, C. L., min. wt. 30,000 lbs.----- 5

Frames, Door or Window:

S. U., in boxes or crates, L. C. L.----- 2

S. U., loose or in packages, C. L., min. wt. 18,000 lbs., subject to

Rule 34----- R-26

K. D., in boxes or crates, L. C. L.----- 3

K. D., loose or in packages, C. L., min. wt. 30,000 lbs.----- 5

57 I. C. C.

The only difference of importance between this conclusion and that previously reached in this case is that frames are to be provided for separately from casings, making no change in our findings as to casings, but establishing on frames, because of their lighter loading, a carload minimum weight of 18,000 pounds with a rating of R-26.

While the descriptions, packing specifications, and carload minimum weights above set forth are, owing to the limitations of the complaint, prescribed only for official classification lines, they were recommended in our report in the *Consolidated Classification Case* for general application.

Our order will be modified in accordance with our findings herein.
57 I. C. C.

No. 9752.¹

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

DIRECTOR GENERAL, MACON, DUBLIN & SAVANNAH
RAILROAD COMPANY, ET AL.

Submitted September 16, 1919. Decided February 17, 1920.

Rates on cotton linters and cottonseed-hull shavings, in carloads, and on sulphuric acid, in tank-car loads, from points in southeastern and Carolina territories to Hopewell, Va., not found to have been unreasonable or unjustly discriminatory. Present rates on cottonseed-hull shavings and sulphuric acid from and to the same points not found to be unreasonable or unjustly discriminatory. Complaints dismissed.

H. S. Farrow, J. P. Laffey, and V. S. Thomas for complainant.

R. Walton Moore, Theodore W. Reath, Alex M. Bull, and Charles J. Rixey, jr., for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

The original complaint in No. 9752 was brought by E. I. du Pont de Nemours Powder Company, and all other complaints by its successor, E. I. du Pont de Nemours & Company. These will be referred to hereinafter as complainant.

In its complaints in No. 9752 and Sub-Nos. 1 to 110, inclusive, and in No. 10045 and Sub-Nos. 1 to 37, inclusive, as amended, complainant alleges that the rates charged on numerous shipments of cotton linters, in carloads, made in 1915, 1916, and 1917, prior to federal control, from points in Georgia, Alabama, Tennessee, Mississippi, South Carolina, and North Carolina to Hopewell, Va., were unreasonable and unjustly discriminatory under sections 1 and 2 of the act to regulate commerce.

¹ This report also embraces No. 9752 (Sub-Nos. 1 to 110, inclusive); No. 10045 and Sub-Nos. 1 to 37, inclusive; No. 10043 and Sub-Nos. 1 to 34, inclusive; No. 9819 and Sub-Nos. 1 to 21, inclusive; and No. 10397 and Sub-Nos. 1 to 8, inclusive; all brought by E. I. du Pont de Nemours & Company, successor to the above-named complainant, against the Director General and various railroad corporations.

In its complaints in No. 10043 and Sub-Nos. 1 to 34, inclusive, complainant alleges that the rates charged on numerous shipments of cottonseed-hull shavings, in carloads, made between February, 1916, and December, 1917, inclusive, from points in Georgia, Alabama, Tennessee, Mississippi, and North Carolina to Hopewell, were, and that the present rates from the same points are, unreasonable and unjustly discriminatory in violation of sections 1 and 2. The allegations of the complaint in Sub-No. 7 relate also to numerous shipments of cotton linters, in carloads, made during the same period from Greenwood, Miss., to Hopewell.

In its complaints in No. 9849 and Sub-Nos. 1 to 21, inclusive, and No. 10397 and Sub-Nos. 1 to 8, inclusive, complainant alleges that the rates charged on numerous shipments of sulphuric acid, in tank-car loads, made between September, 1915, and August, 1918, inclusive, from points in Alabama, Georgia, Florida, North Carolina, and South Carolina to Hopewell, were, and that the present rates from the same points are, unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the act to regulate commerce and unjust and unreasonable in violation of section 10 of the federal control act.

The prayers are for reparation on the past shipments of all three commodities and for the establishment of reasonable and nondiscriminatory rates on cottonseed-hull shavings and sulphuric acid. Complainant, however, has no substantial interest in the rates for the future, since it has discontinued the manufacture of munitions at Hopewell.

Separate hearings were had in Nos. 9752, 9849, 10043, and 10397, and a further hearing was had in No. 9752 in connection with No. 10045. As the cases involved related issues, they were made the subject of a single proposed report. Exceptions were filed by the complainant.

The term "Virginia cities," as used in this report, means those cities in Virginia, served by the Norfolk & Western or the Chesapeake & Ohio, which have, in general, a parity of rates. The more important are Norfolk, Richmond, Petersburg, Portsmouth, Newport News, Lynchburg, Suffolk, and Roanoke. Rates to and from other points in the state are usually made by combination based on these cities. The rates here in issue were thus made in most instances by combination on Petersburg.

Complainant's plant at Hopewell was originally intended for the manufacture of high explosives, but was never used for that purpose. At the outbreak of the European war, shortly after the completion of the plant, the manufacture of nitrocellulose was inaugurated. In 1915 and subsequent years, large quantities of cotton linters, cotton-

seed-hull shavings, and sulphuric acid were received from points in southeastern and Carolina territories. As a high-explosives plant under peace conditions, it would have drawn raw material chiefly from the North Atlantic states and shipped the product to markets in the south and west. The decision to locate the plant on the line of the Norfolk & Western at Hopewell in part resulted from the agreement of that carrier to accord Hopewell Virginia cities rates. The other site under consideration was on the Seaboard Air Line at Suffolk. In conformity with this agreement Hopewell was accorded Virginia cities rates inbound on raw material from eastern and central points and outbound on manufactured products to such points and to points in southern classification territory as well.

When its plant was converted into a nitrating industry, complainant expected to receive Virginia cities rates on the raw materials drawn from points in the southeast. The Norfolk & Western did not so interpret its agreement and these complaints were filed seeking such further extension of Virginia cities rates to Hopewell and reparation on that basis.

Hopewell is a local point on the Norfolk & Western's City Point branch, 9 miles north of Petersburg, the main-line junction, and 1 mile south of City Point, Va., the terminus. Complainant contends that Hopewell was and is entitled to Virginia cities rates on the traffic in question: (1) because of its geographical location and the similarity of its situation to that of West Point, Va., which has these rates; (2) because the volume of tonnage moving in and out of its plant compared favorably with the tonnage moving in and out of any one of the Virginia cities; (3) because it had and has Virginia cities rates on southbound traffic, on traffic from Memphis and Nashville, Tenn., and on traffic to and from points in other than southern territory; and (4) because it has been given the Virginia cities rates on linters from southern points.

Defendants state that West Point was accorded Virginia cities rates because of conditions which do not now exist as to either West Point or Hopewell; that complainant has no competition in Virginia; that Hopewell was given Virginia cities rates on traffic from eastern points because of the influence of the steamship lines which operate in connection with the rail lines from Virginia ports; that the reasons for according Virginia cities rates to traffic from central territory and from Memphis and Nashville and on traffic to the south have been explained in *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.*, 51 I. C. C., 593; and that the extension of Virginia cities rates to Hopewell on cotton linters from the south was brought about in 1917 by action of the Seaboard Air Line, followed

by its competitors, which would not have been taken if the adjustment had been analyzed, as it has been since.

There is no allegation of undue prejudice under section 3 and no evidence of unjust discrimination under section 2, and therefore the issue is whether the rates to Hopewell were and are unreasonable. The circumstances that Hopewell may have a geographical location similar to that of the Virginia cities and that it has the same rates on other traffic, although they merit consideration, are not controlling of this issue. We shall now consider the specific evidence with reference to the rates on each commodity.

COTTON LINTERS.

All of the shipments of cotton linters moved through Petersburg and the rates assessed were the Petersburg combinations. The Virginia cities rates applying to Petersburg were the sixth-class rates or equivalent commodity rates. For the haul of 9 miles from Petersburg to Hopewell proportional rates applied of 5 cents on compressed and 9 cents on uncompressed linters, in connection with carload minima of 20,000 pounds and 12,000 pounds, respectively, and complainant's attack was largely directed against these proportionals. All rates are stated herein in cents per 100 pounds, except those on sulphuric acid, which are stated in amounts per net ton.

Complainant compares these proportionals with a rate of 7 cents maintained by the Norfolk & Western from Norfolk to Hopewell via Petersburg for a haul of 92 miles. This 7-cent rate is shown by defendants to have been an old water-compelled intrastate rate carried in an intrastate tariff filed with us in accordance with the policy of the Norfolk & Western. When the 5 per cent and 15 per cent general increases were authorized, this rate was not advanced. It was primarily established to apply on cotton solely, but was applicable to linters under the Virginia classification, which prescribed cotton rates on cotton linters, n. o. s. The Corporation Commission of Virginia permitted increases effective April 5, 1918, to 11 cents on cotton, compressed, any quantity, and 16 cents on cotton, uncompressed, any quantity.

The proportionals in question, which were respectively 3 cents less than the local rates on linters, compressed or uncompressed, from Petersburg to Hopewell, were not out of line with the rates on other commodities over this branch line. The minimum car revenue was \$10 on compressed and \$10.80 on uncompressed linters, whereas on lumber the car revenue was about \$15 on the average loading; on cement, \$12 on the minimum loading; on pig iron, \$12 to \$20 on the minimum loading, dependent on capacity of car; and on salt, about \$15 on the minimum loading. Even if the proportionals were too high,

considered as separately established rates for local hauls from Petersburg to Hopewell, and this the evidence fails to show, that fact would not prove that the through rates were unreasonable.

Complainant offered in comparison rates on linters from the points where its shipments originated to Lake Junction, N. J., where one of its competitors was located. The comparison fails to support complainant's allegation of unreasonableness, having in mind the principle that ton-mile earnings should decrease as the distance increases and the fact that a considerable portion of the haul to Lake Junction is through a lower-rated territory than that south of Hopewell. The following are from complainant's exhibits, the rates stated being those on compressed linters, except as noted:

From—	To Hopewell			To Lake Junction.		
	Distance, miles.	Rate, cents.	Ton-mile earnings, mills.	Distance, miles.	Rate, cents.	Ton-mile earnings, mills.
Selma, Ala.	781	45	11.5	1,151	54	9.5
Newberry, S. C.	405	45	22.2	806	49	12.1
Jackson, Miss.	968	151	10.5	1,341	54.6	8.1
East Point, Ga.	562	45	16.0	932	55	11.8

¹ Applicable on linters, "Uncompressed, carrier's privilege of compressing at point of shipment or in transit. Rate includes cost of compression."

It will be observed that the rate from Jackson to Hopewell yields 10.5 mills for 968 miles, while the rate from East Point to Lake Junction yields 11.8 mills for the comparable distance of 932 miles. Similar results are obtained when rates from other points of origin for comparable distances are used.

For the purpose of showing that the sixth-class rating is low as applied to linters, defendants recite the following classification history. When this commodity was first specifically named in the southern classification, in 1883, it was accorded the same rating as cotton, viz, first class, any quantity. Prior to that time no distinction had been made between cotton and cotton linters. In December, 1888, the sixth-class rating was adopted on linters, any quantity, when limited in value to 2 cents per pound, but otherwise the cotton rates were applied. This concession was made, it is stated, in response to the urgent plea of the cottonseed crushers to permit and encourage the development of the cottonseed-oil industry. This value limitation remained in the tariffs until 1915 when, it is stated, to comply with the Cummins' amendment to the act to regulate commerce such limitations on all commodities were stricken from the classification on such short notice that final consideration could not then be given to the establishment of a proper rating having no value limitation. The result was that although the value of linters had more than doubled, and reached 8 cents per pound during the

period when the shipments here involved moved, the sixth-class rating was applicable on all linters.

For the purpose of showing that the northbound Virginia cities rates were on a low basis defendants cite the fact that those rates were and are lower than the southbound rates. For example, on June 24, 1918, the rates from the Virginia cities to Atlanta on the numbered classes were as follows:

Class-----	1	2	3	4	5	6
Rate-----	100	86	76	64	52	43

While from Atlanta to the Virginia cities the rates were as follows:

Class-----	1	2	3	4	5	6
Rate-----	84	79	64	52	43	40

The southbound class rates were revised January 1, 1916, because of our decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, but the northbound rates have not yet been so revised. For the same purpose defendants showed that the class rates from typical points in the southeast to Richmond were on a relatively lower basis than those to Cincinnati, Ohio.

Other exhibits submitted by defendants tend to show that the through rates to Hopewell on linters were not unreasonable as compared with similar rates between other points.

From seven points in Louisiana the rates on compressed linters to St. Louis, approved by us in *Louisiana Cotton*, 46 I. C. C., 451, averaged 58.3 cents, with an average ton-mile yield of 22.2 mills for an average distance of 523 miles, as against an average rate of 47.2 cents from 34 of the points of origin in southeastern and Carolina territories to Hopewell, with an average yield of 12 mills per ton-mile for an average distance of 786 miles.

Another exhibit showed that the rate of 60 cents on compressed linters from Greenwood, Miss., to Hopewell, short-line distance 956 miles, was relatively lower than the rates from numerous points in southeastern and southwestern territories to points in central territory. Other similar comparisons were offered.

Emphasis is placed by defendants upon the low per-car and car-mile earnings upon the shipments as they actually moved. The average loading was 16,191 pounds; the average haul, 587 miles; the average per-car earnings, \$87.26; and the average car-mile earnings, 14.8 cents.

COTTONSEED-HULL SHAVINGS.

Cottonseed-hull shavings were and are rated class A, any quantity, in the southern classification. On most of complainant's shipments combination rates were applied made up of the class A rate, or an equivalent commodity rate with a minimum of 20,000 pounds, to 57 I. C. C.

Petersburg, and the fifth-class proportional mileage rate of 7.4 cents, minimum 30,000 pounds, governed by the official classification, beyond. On August 1, 1917, the Petersburg-Hopewell rate was increased 15 per cent to 8.5 cents. On the shipments from North Carolina points a rate of 4 cents was applicable for the movement beyond Petersburg. Defendants state that in 1916 joint commodity rates were established from Birmingham and Selma, Ala., and Atlanta and Macon, Ga., to Hopewell, which were lower than the Petersburg combinations. The class A rates were about 40 per cent lower than the sixth-class rates which applied on linters.

Complainant's evidence was directed principally against the rate of 7.4 cents from Petersburg to Hopewell. It compared the minimum revenue of \$22.20 per car yielded by this rate with the minimum per-car revenues of \$10 and \$10.80 under the respective proportional rates of 5 cents and 9 cents on linters, compressed and uncompressed. While the maintenance of a higher rate on cottonseed-hull shavings than on linters might be unreasonable for local movements, the comparison loses significance in view of the fact that the through rates on the shavings were substantially lower than the through rates on linters. Nor is light thrown on the reasonableness of the through rates by complainant's comparison of the rate of 7.4 cents with a rate of 5 cents from Norfolk to Hopewell for a distance of 92 miles; with a rate of 5.5 cents from Richmond to Hopewell for a distance of 31 miles; and with the Petersburg-Hopewell intrastate rate of 35 cents per ton; or by the facts that in constructing rates from Carolina points the factor from Petersburg to Hopewell is 4 cents and that there were contemporaneously in effect joint rates from Birmingham, Macon, and Atlanta to Hopewell only 1.6 cents higher than the Virginia cities rates.

Complainant compared the through rates to Hopewell with those from the same points of origin to Lake Junction, N. J., but the results of this comparison do not differ from those of the similar comparison in the case of the rates on linters.

Defendants submitted numerous exhibits comparing the rates on cottonseed-hull shavings to the Virginia cities and to Hopewell with rates from the same territory of origin to other destinations and with rates on low-grade commodities, all of which tend to show that the rates attacked were not unreasonable.

In *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.*, *supra*, we found that the rates on cottonseed-hull shavings from Birmingham to Hopewell, here again in issue, had not been shown to have been unreasonable.

SULPHURIC ACID.

Complainant's shipments of sulphuric acid upon which it seeks reparation originated at Pensacola and Jacksonville, Fla., Montgomery and Grasselli, Ala., Savannah, Macon, and Pelham, Ga., Charlotte, Wilmington, Selma, Durham, and Winston-Salem, N. C., and Charleston and Pon Pon, S. C.

The development of the movement of sulphuric acid in tank cars from southern producing points is detailed in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, hereinafter called the *Copperhill Case*, and in *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200. In 1915 a large demand developed for sulphuric acid to be used in the manufacture of war munitions. Previously this commodity had been used principally in the manufacture of fertilizer, and fertilizer plants throughout the south, which were equipped for the manufacture of the acid, undertook to supply a part of the demand. When this new movement first developed the carriers established commodity rates, which were upon no uniform basis, from such points in the south as were making shipments, to munitions-manufacturing points in the north, including Hopewell. With a view to establishing a more uniform rate structure, the southern lines, which were principally concerned in establishing proportional rates to the gateways, decided to establish a basing scale, not published, for use in making rates over the southern lines to the Ohio River and Virginia cities gateways which would yield approximately the same earnings per ton-mile as the rates prescribed by us in the *Copperhill Case*, decided February 5, 1912, for application from Copperhill, Tenn., to certain points in North Carolina, South Carolina, Georgia, and Florida. The rates to the Virginia cities constructed on the scale, being primarily basing rates, are equalized through the use of the short-line mileages to Richmond, referred to as the primary gateway.

In making the rates to Hopewell three alternative bases are provided and whichever makes the lowest through charge is used. These bases are: (1) The scale applied to the continuous available short-line mileage via Bristol to Hopewell; (2) the scale applied to the continuous available short-line mileage to Burkeville, Va., plus 85 cents per ton beyond; and (3) the scale applied to the continuous short-line mileage to Petersburg, plus 60 cents per ton beyond. It is obvious that the through rates to Hopewell can in no instance be greater than the Petersburg, or Virginia cities, rates plus 60 cents per ton. Rates so constructed were applied on complainant's shipments.

There is practically no consumption of sulphuric acid at the Virginia cities and rates to points beyond the Virginia cities and Ohio

River gateways were and are constructed in substantially the same manner as the rates to Hopewell, viz, by the use of the scale rate to the gateway and local or proportional rates beyond.

While complainant compared the rates attacked with those to Lake Junction, with a result similar to that referred to in connection with the rates on linters, its principal contention is that the rates to Hopewell should be constructed upon the basis of the unpublished mileage scale applied to the continuous short-line mileage to that point, or, assuming that basis to be improper, that the rates to Hopewell should be a definite and reasonable amount higher than rates to Petersburg constructed upon the basis of the mileage scale applied to the short-line mileage to Petersburg rather than on the short-line mileage to Richmond. It contends that the Hopewell rates should not exceed the Petersburg rates, so constructed, by more than 20 cents per ton, which is the amount the rates to Lake Junction, located on a branch line, exceed the main-line junction point rates.

Complainant cites *Sulphuric Acid from New Orleans, La., supra*, and *Aetna Explosives Co. v. A. G. S. R. R. Co.*, 51 I. C. C., 11, but these cases do not support its contention.

Defendants maintain that the Virginia cities rates under the unpublished scale, which is based upon rates prescribed at a time when, they say, the conditions surrounding the transportation of sulphuric acid were substantially different from those existing at the time complainant's shipments moved and at present, are low. In the *Copperhill Case*, referring to the carriers' position that sulphuric acid, which was then used principally in the manufacture of fertilizer, should take rates substantially the same as fertilizer, we said:

To this idea we can not subscribe. So far as the case shows, fertilizer does not compete with sulphuric acid nor is it manufactured at the point where this acid originates. The value of the fertilizer distributed throughout the south is from \$15 to \$20 per ton at the plant. The value of this sulphuric acid is \$5 per ton at the point of origin. It is strictly a raw material and we think that distinctly lower rates should be applied for the transportation of these commodities from the point of origin to point where they are finally used than that upon the manufactured fertilizer.

When complainant's shipments moved sulphuric acid was principally used in the manufacture of war munitions. Defendants' witness testified that during the war the price of 60° sulphuric acid rose to as high as \$100 per ton, but whether this was the delivered or the point of origin price was not stated. They further testified that an extensive investigation made in November, 1917, disclosed that the acid was then moving on contracts calling for f. o. b. shipping-point prices ranging from \$18 per ton upward. Complainant's witness, its traffic manager, could not state positively the price complainant

was paying for the acid but testified "I imagine it would be around \$40 per ton," referring, apparently, to the delivered price.

Defendants also refer to the well-known increase in transportation costs since the *Copperhill Case* was decided.

The combination rates to Hopewell under attack were much lower than the combination class rates, as illustrated by the following table, in which are also shown the commodity rates originally established, as above described:

From—	Class.	Commodity.	Scale.
Charleston, S. C.	\$6.48	\$3.10	\$3.58
Macon, Ga.	9.08	3.82	4.50
Charlotte, N. C.	5.80	2.60	2.86
Pon Pon, S. C.	8.20	3.50	3.75

Defendants submitted in evidence numerous exhibits comparing the rates attacked with the contemporaneous rates on sulphuric acid from southeastern and Carolina points to the Ohio River, to eastern acid-consuming points, and to other points; from points in central freight association territory to Hopewell and to points in eastern trunk line territory; and from points in New Jersey to Hopewell; all tending to show that the rates attacked were not unreasonable. Defendants' witness testified with respect to many of the rates cited in comparison that there was a considerable movement thereunder. One exhibit showed the average rate prior to June 25, 1918, from Charleston and Pon Pon, S. C., Macon, Ga., and Grasselli, Ala., typical points of origin, to Hopewell, to have been \$4.08, with an average yield of 7.8 mills per ton-mile for an average distance of 521 miles, as against an average of \$5.19 for 103 rates from southeastern and Carolina points to eastern destinations to which there was a large movement, with an average yield per ton-mile of 9.1 mills for an average distance of 578 miles. Other exhibits were to the same effect and it will serve no useful purpose to set them forth in detail.

Upon the facts of record we do not find that the rates charged on any of the three commodities were unreasonable or unjustly discriminatory, or that the present rates on cottonseed-hull shavings and sulphuric acid are unreasonable or unjustly discriminatory.

An order dismissing the complaint will be entered.

57 I. C. C.

No. 9926.¹

JOBBER'S & MANUFACTURERS' BUREAU OF THE CHAM-
BER OF COMMERCE OF HUNTINGTON, W. VA.,

v.

ATLANTIC CITY RAILROAD COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted October 11, 1919. Decided February 11, 1920.

1. Class and commodity rates between Huntington, W. Va., and points in trunk lines and New England territories, based on 87 per cent of the Chicago-New York and the New York-Chicago rates, found unreasonable and unduly prejudicial to the extent that they exceed 82 per cent of such base rates.
2. Commodity rates on glass bottles from Huntington to eastern cities found unduly prejudicial to the extent they exceed the rates contemporaneously in effect from Charleston, W. Va., by more than 3 per cent of the Chicago-New York rate.

W. P. Tingley and Willis H. Fowle for complainants.

W. B. Snell, jr., Francis B. James, E. E. Williamson, and Ewing

II. Scott for Charles Boldt Company, intervener.

Charles R. Webber for Baltimore & Ohio Railroad Company;
W. N. King for Kanawha & Michigan Railway Company; *T. J. Cook* for New York Central lines; *W. W. Collin, jr.,* and *James Stillwell* for Pennsylvania lines; *R. Walton Moore* and *D. Lynch Younger* for Norfolk & Western Railway Company; and *W. S. Bronson* and *J. S. Patterson* for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS, McCHORD, MEYER, AND WOOLLEY.

A proposed report was prepared by the examiner and served on the parties in this case. Exceptions were filed to it by the Charles Boldt Company, intervener, and the defendants. The following statement of facts is correct and is substantially the same as that made by the examiner.

Huntington, W. Va., on most of its traffic to and from trunk line and New England territories has rates on the basis of 87 per cent of the Chicago-New York or New York-Chicago rates. By complaint it asks that it be accorded the 74 per cent basis. The com-

¹ The report also embraces No. 9808, West Virginia Rail Company v. Pennsylvania Railroad Company et al.

plaint was filed chiefly on behalf of the commercial and industrial interests of the city. It is alleged that the rates are unreasonable and that they are unduly prejudicial as compared with the rates applying between other points in central freight association territory and the east. The Charles Boldt Company, which has a bottle factory at Huntington, intervened in support of the complaint. This company complains particularly of the maintenance of higher rates on bottles from Huntington to the east than from Charleston, W. Va., where a formidable competitor is located. It was represented by counsel, offered testimony, and has filed a brief. Complainant and intervener will be spoken of together as complainants. By supplemental complaint filed after the hearing in Docket No. 9926 the Director General of Railroads was made a party defendant. He answered but no further hearing was asked or had.

A map of the situation before us in this case appears as an appendix to the report.

Huntington is on the main line of the Chesapeake & Ohio Railway, and on the Ohio River division of the Baltimore & Ohio Railroad, which extends along the Ohio River from Wheeling to Kenova, through Parkersburg and Huntington, W. Va. It is 161 miles east of Cincinnati, Ohio, and 281 miles southwest of Pittsburgh, Pa. The 87 per cent group, in which Huntington is situated, is rather long and narrow and borders on the Ohio River. It reaches from a point just west of Cincinnati to and considerably beyond Charleston, W. Va., 50 miles east of Huntington. It includes also Portsmouth and Ironton, Ohio, Ashland, Ky., and Kenova, W. Va., on the Ohio River between Cincinnati and Huntington, together with other points east of Cincinnati on the Chesapeake & Ohio and Norfolk & Western railways, and points on various lines in southern Ohio.

Before the hearing the Chamber of Commerce of Charleston, W. Va., filed a petition of intervention stating that its interest in the case was the same as complainant's, but it did not appear at the hearing nor file a brief. Representatives of the commercial organizations of Portsmouth, Ironton, and Ashland appeared at the hearing and stated that their interests were the same as complainant's and that they desired the same relief. They did not intervene nor offer testimony, however. Shortly after the hearing, the Portsmouth organization filed a complaint similar to the one here before us, and the Chamber of Commerce of Ashland intervened therein, stating that its interest was the same as that of the Portsmouth organization. *Board of Trade of Portsmouth v. A. C. R. R. Co.*, 57 I. C. C., 78, disposed of in a separate report.

Huntington is a thriving city with a population of nearly 50,000 and a number of industrial and jobbing enterprises. Its growth and development have been rapid, and the tonnage now moved to

and from Huntington shows marked increases over past years. Abundant supplies of coal, oil, gas, timber, sand, and salt are close at hand. Defendants concede that Huntington has many natural advantages and suggest that it is therefore well able to overcome its freight-rate handicaps.

Huntington's principal eastbound traffic consists of articles which it manufactures. As an industrial center, it is in active competition with various points in central freight association territory, particularly Pittsburgh, Pa., Wheeling, W. Va., and various manufacturing cities in Ohio—Cleveland, Toledo, Columbus, Akron, Canton, Youngstown, East Liverpool, Bellaire, and others, all of which have lower rates to the east than Huntington. Huntington's westbound traffic is made up very largely of manufactured articles brought from the east for distribution in the surrounding country. As a jobbing center, its principal competition is with points in the 87 per cent group, and therefore, in so far as westbound traffic is concerned, it is on a rate parity with some of its chief competitors. Huntington has considerable jobbing competition, however, with Parkersburg and Clarksburg, W. Va., and some little with Wheeling, W. Va., and other cities in northern West Virginia, eastern Ohio, and western Pennsylvania, which have lower rates from the east than Huntington.

A statement of the class rates in force at the time of the hearing from Huntington and from other points in central freight association territory to Atlantic seaboard cities, as given by complainant, appears below. All of the rates have since been increased in accordance with the Director General's Order No. 28. The westbound rates are substantially the same as the eastbound rates.

From—	Per- centage basis.	Dis- tance.	To—	Classes.					
				1	2	3	4	5	6
Huntington, W. Va.....	87	<i>Miles.</i>	New York, N. Y.....	78.5	68.5	52.0	36.5	31.5	26.0
		650	Philadelphia, Pa.....	76.5	66.5	50.0	34.5	29.5	24.0
		477	Baltimore, Md.....	75.5	65.5	49.0	33.5	28.5	23.0
		504	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0
		559	New York, N. Y.....	64.0	56.0	42.5	30.0	25.5	21.5
Cleveland, Ohio.....	71	479	Philadelphia, Pa.....	62.0	54.0	40.5	28.0	23.5	19.5
		457	Baltimore, Md.....	61.0	53.0	39.5	27.0	22.5	18.5
		634	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0
		619	New York, N. Y.....	69.5	61.0	46.0	32.5	27.5	23.0
Columbus, Ohio.....	77	539	Philadelphia, Pa.....	67.5	59.0	44.0	30.5	25.5	21.0
		519	Baltimore, Md.....	66.5	58.0	43.0	29.5	24.5	20.0
		661	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0
		423	New York, N. Y.....	54.0	47.5	36.0	25.0	21.5	18.0
Pittsburgh, Pa.....	60	343	Philadelphia, Pa.....	48.0	41.5	34.0	23.0	19.5	16.0
		326	Baltimore, Md.....	46.0	39.5	33.0	22.0	18.5	15.0
		503	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0
		529	New York, N. Y.....	68.0	59.5	44.0	29.5	25.0	21.0
Parkersburg, W. Va.....	70	463	Philadelphia, Pa.....	57.0	49.5	40.0	27.5	23.0	19.0
		382	Baltimore, Md.....	55.0	47.5	39.0	26.5	22.0	18.0
		559	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0
		495	New York, N. Y.....	54.0	47.5	36.0	25.0	21.5	18.0
Wheeling, W. Va.....	60	415	Philadelphia, Pa.....	48.0	41.5	34.0	23.0	19.5	16.0
		377	Baltimore, Md.....	46.0	39.5	33.0	22.0	18.5	15.0
		554	Norfolk, Va.....	66.5	58.0	43.0	29.5	24.5	20.0

Reduced to a per-mile basis the rates applying between Huntington and points in eastern territory are materially higher than the corresponding rates enjoyed by the other cities mentioned.

The rates on all classes between New York and Huntington are higher than for equal distances between points within central freight association territory. The reverse is true of the rates between New York and certain points other than Huntington in or on the eastern border of central freight association territory, except as to fifth and sixth classes. This is shown in the following table of rates in effect at the time of the hearing:

Rates from New York to various points compared to rates in C. F. A. territory for corresponding distances.

	Miles.						
New York-Huntington, W. Va.....	650	78.5	68.5	52.0	36.5	31.5	26.0
C. F. A.....		72.5	61.5	48.0	36.0	26.5	20.0
New York-Wheeling, W. Va.....	495	54.0	47.5	35.0	25.0	21.5	18.0
C. F. A.....		63.5	54.0	42.5	32.5	22.0	18.0
New York-Parkersburg, W. Va.....	529	63.0	55.5	42.0	29.5	25.0	21.0
C. F. A.....		65.5	55.5	44.0	33.0	23.0	18.5
New York-Pittsburgh, Pa.....	428	54.0	47.5	36.0	25.0	21.5	18.0
C. F. A.....		60.0	51.0	40.0	30.0	21.0	17.0
New York-Columbus, Ohio.....	619	60.5	61.0	46.0	32.5	27.5	23.0
C. F. A.....		70.0	60.0	47.0	35.0	24.5	19.5
New York-Marion, Ohio.....	647	69.5	61.0	46.0	32.5	27.5	23.0
C. F. A.....		72.5	61.5	48.5	36.0	25.5	20.5
New York-Crestline, Ohio.....	620	68.5	60.0	45.5	32.0	27.5	23.0
C. F. A.....		70.0	59.5	47.0	35.0	24.5	19.5

Various points also have lower commodity rates than Huntington. The commodity rate on sugar for New York to Huntington at the time of the hearing was 23.8 cents, while to Cincinnati it was 1 cent lower. The record contains no explanation of this situation but our understanding is that it is due to the fact that the lines from the Gulf ports maintain higher rates to Huntington than to Cincinnati. The rate on canned fruits and vegetables from Baltimore to Huntington is on the fifth-class basis, but to Indianapolis, Ind., Louisville, Ky., and Columbus and Cincinnati, Ohio, the rates are 1 cent below fifth class. This situation was not explained. The rate from New York to Huntington on plaster and stucco at the time of the hearing was 20.5 cents, but to several points in the 60, 67, and 71 per cent groups there was a rate of 15.7 cents. This situation likewise was not explained. There is no doubt a movement of sugar from New York to Huntington, but whether Huntington is actually interested in the rates on the other commodities referred to is not established.

Defendants, at the time of the hearing, had a commodity rate on lumber from Huntington to New York of 22.6 cents. From Cincinnati, also an 87 per cent point, the rate to New York via lines operating north of the Ohio River was 20.3 cents. The 20.3-cent rate was the well-known Lexington-basis proportional rate applied locally. The 20.3-cent rate also applied from points in Ohio intermediate

No. 10153.
BOARD OF TRADE OF PORTSMOUTH, OHIO,
v.
ATLANTIC CITY RAILROAD COMPANY. DIRECTOR
GENERAL, ET AL.

Submitted October 11, 1919. Decided February 11, 1920.

Class and commodity rates between Portsmouth, Ohio, and Ashland, Ky., and points in trunk line and New England territories based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to the extent that they exceed 82 per cent of such base rates.

John S. Burchmore and *William W. Collin, jr.*, for complainant.
W. P. Tingley and *Willis H. Fowle* for Chamber of Commerce of Ashland, Ky., interveners.

J. S. Patterson and *W. S. Bronson* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND WOOLLEY.

A tentative report was prepared and issued in this case to which exceptions were filed by both the complainant and the defendants. The following with minor modifications is the statement of facts as set forth by the examiner in that report. This statement is in accordance with the record.

As has been described, notably in *Saginaw Board of Trade v. Grand Trunk Ry. Co.*, 17 I. C. C., 128, and *Michigan Percentage Cases*, 47 I. C. C., 409, that portion of the United States east of the Mississippi River, north of the Ohio River, and north of the main line of the Norfolk & Western Railway Company, is divided into two groups, central freight association and trunk line territories, which are each further subdivided into rate groups. The rates between these various groups bear a fixed percentage relationship to the rates between Chicago, Ill., and New York, N. Y., which are the unit or base rates and 100 per cent. All points less distant to New York than Chicago are located in various groups by the use of a percentage formula. Under the system, class and commodity rates between Portsmouth, Ohio, and eastern territory are 87 per cent of

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the base rates. This group includes, among numerous other points, Cincinnati and Ironton, Ohio, Ashland, Ky., Kenova, Huntington, and Charleston, W. Va., and is generally known as the southern Ohio group. On eastbound traffic the southern line of this group extends along both sides of the Ohio River from North Bend, Ohio, 15 miles west of Cincinnati, to Huntington and then east as far as Deep Water and Gassaway, W. Va. The group is only slightly different as to westbound traffic.

Complainant, composed of persons resident of or engaged in manufacturing, jobbing, or retail businesses in the city of Portsmouth and adjoining territory, alleges the southern Ohio group is unduly large, unreasonable, and unduly prejudicial; that Portsmouth should be no longer included in it, but should have a percentage of 77 per cent of the base rates to afford it reasonable rates which will not unduly prejudice it to the undue preference of points in the states of West Virginia, Ohio, Pennsylvania, Indiana, Kentucky, and other states in central freight association territory.

The Chamber of Commerce of Ashland intervened to obtain the same percentage relation asked by Portsmouth. It took no further part in the proceeding and no evidence was submitted on its behalf. Ashland is local to the line of the Chesapeake & Ohio Railway, 31 miles southeast of South Portsmouth, Ky., a station on that road on the south bank of the Ohio River just across from Portsmouth.

The case is similar in principle to *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 57 I. C. C., 64, except that Huntington asks a relationship of 74 per cent of the base rates. The defendants herein introduced the record in the *Huntington Case* as evidence in this case. The present case and that of Huntington are akin and are related territorially and by intervention. We will consider the report in the *Huntington Case*, in so far as it refers to the general situation prevalent throughout the southern Ohio group, as read into this report as a part hereof, and will detail here only the local situation of Portsmouth and near-by towns and circumstances peculiar to them as set forth in hearing and argument.

Complainant asserts that under the percentage system—a mileage basis involving the use of a formula—the rates to and from any given point can be measured with mathematical accuracy and counsel for defendants coincide in this view that the facts in this case, upon which the conclusion of the Commission must hinge, makes the problem largely a mathematical one. Defendants urge that the Commission should find a distance from Portsmouth to New York properly related to the formula distance of 920 miles (the short-line distance is 896 miles), Chicago to New York, and that the percentage thus applicable under the formula to Portsmouth should

be augmented (1) by a just reflection of weighted distance, and (2) by a just reflection of unfavorable transportation conditions which defendants seek to show obtain in the southern Ohio group as compared with more favorable transportation conditions in central freight association territory generally.

The southern Ohio group was established in 1883 and then only included Cincinnati, Portsmouth, Ironton, Gallipolis, Pomeroy, and Hillsboro, all in Ohio. At that time a railroad, now a part of the Baltimore & Ohio, was Portsmouth's sole rail outlet. When the through lines of the Chesapeake & Ohio in 1889, and the Norfolk & Western in 1892 were completed, the group was extended to include Huntington and Charleston.

The 87 per cent basis applies on all class and commodity traffic between Portsmouth and Huntington, and points intermediate thereto, such as Ironton and Kenova, and trunk line territory, except that on grain there is a special rate adjustment the same as that applicable from central freight association territory, and on lumber the rate from Cincinnati to the east applies under the operation of the long-and-short-haul provision of the fourth section of the act. In addition, articles of iron and steel, billets and articles taking billet rates; pig iron and articles taking same rates, as is shown in *Pollak Steel Co. v. B. & O. R. R. Co.*, 49 I. C. C., 238; brick and certain other articles of clay take, instead of the 87 per cent basis, rates equivalent to 77 per cent of the base rates. Further, all traffic to the Virginia cities and to Atlantic seaboard points south of Baltimore, Md., takes 77 per cent. Barrels or drums used as containers for oils, paints, and chemicals are not listed with other articles of manufactured iron and steel which take 77 per cent of the base rates. They are rated fifth class, the rate applicable under which, from Portsmouth to New York, is 39.5 cents per 100 pounds. The drums are manufactured in five sizes weighing 20, 34, 55, 80, and 175 pounds. Placing Portsmouth in a 77 per cent group would reduce the rate applicable 5 cents per 100 pounds. The competition in the sale of these articles is from Cleveland, Niles, and Warren, Ohio, Detroit, Mich., Sharon, Pa., Brooklyn, N. Y., and Bayonne, N. J.

Portsmouth, a city of about 40,000 inhabitants, is at the confluence of the Ohio and Scioto rivers. Near-by are neighboring towns: New Boston, Sciotoville, Wheelersburg, and Union Mills, all in the state of Ohio; Fullerton, South Portsmouth, and Beattyville, immediately across the Ohio River in Kentucky. They have a population of approximately 15,000. Portsmouth is directly served by the lines of the Baltimore & Ohio and the Norfolk & Western Railway, and, indirectly, from across the Ohio River, by the Chesapeake & Ohio Rail-

way. Portsmouth is a terminus of the Baltimore & Ohio Railroad and a junction of the Columbus, Ohio, and Cincinnati divisions of the Norfolk & Western Railway. The Scioto Valley affords an easy grade for the railroad lines which traverse it, and is very fertile. The hills near Portsmouth are filled with shale, fire clay, and limestone, raw materials for the manufacture of brick, clay products, and concrete. Iron, timber, and coal are almost at its doors, and Portsmouth is supplied with natural gas. It procures its raw materials at first cost.

In 1914, Portsmouth had 76 industries, capitalized at \$7,515,000, the products of which were then of a value of \$7,682,000. In addition to the usual complement of stores, wholesale and retail, dealing in groceries, dry goods, shoes, drugs, fruits, mill, and mine supplies, there are factories producing iron and steel articles, fire and paving brick, coke and by-products, furniture, shoes, knit goods, flour, and mill products. However, while the value of the articles produced at Portsmouth increased in the year 1914 by 15 per cent of the value of the products in the year 1899, those of Cincinnati increased 49 per cent; Columbus, 65 per cent; Charleston, 193, and Huntington, 213 per cent. In the period 1880 to 1916, Portsmouth's population increased 153 per cent, Ashland's 201 per cent, Charleston's 614 per cent, and Huntington's 1,337 per cent. And to stress the point it makes that its industrial development has been retarded through prejudicial transportation charges, complainant indicates that the industries which have had substantial growth are those accorded a 77 per cent adjustment—iron and steel and brick. It should be noted, however, that all these points, except Columbus, had the same percentage relation; suggesting, at least, that something other than freight rates was responsible for the difference in growth.

Portsmouth lies at the western end of an almost continuous manufacturing region extending southeastward to Huntington; there are no manufacturing or industrial communities of moment between Portsmouth and Cincinnati. Consequently complainant urges that Portsmouth is the logical point at which to split the southern Ohio group.

The various concerns located at Portsmouth compete with those engaged in similar businesses as indicated below. Groceries, with the following points in Ohio: Columbus, 77 per cent; Chillicothe, 80 per cent; and Washington Court House, 82 per cent territories. By-products of coke, with the following points in Ohio: Youngstown, 66.5 per cent; Toledo, 78 per cent; and Cleveland, 71 per cent territories; with the following points in West Virginia: Wheeling, 60 per cent, and in Michigan with Detroit, in 78 per cent territory. Shoes, with the following points in Ohio: Cincinnati, 87 per cent; Chilli-

cothe, and Columbus, and in West Virginia, with Huntington, 87 per cent. Or, stated from another angle, although Portsmouth has substantially equal outbound rates for similar distances with its neighboring cities, the territory it can reach on an equal total charge is narrowed because Portsmouth must pay, in many instances both in respect of class and commodity rates, for a lesser inbound and outbound haul, the same or a higher total charge. For example, Macon, Ohio, is 53 miles from Cincinnati and 54 miles from Portsmouth and although Cincinnati has 71 miles the greater total haul, it can job in Macon at rates equal to those of Portsmouth.

An interesting sidelight on this alleged rate disability of Portsmouth is found in an exhibit produced by the complainant. It takes 652 miles as the short-line workable distance from Portsmouth to New York and short-line distances from 35 other points: 28 in Ohio; 4 in West Virginia; 2 in Indiana; 2 in Pennsylvania; and 1 in New York. These points are located in 60, 66.5, 70, 71, 74, 76, 77, 78, 80, 82, 84, 85, 87, 88, and 93 per cent territories. The application of the short-line distances and the percentage formula indicate whether they are below, on, or above the percentage group in which they are located. For example, Charleston, W. Va., is in the 87 per cent group. The short-line distance thence to New York is given by complainant as 611 miles, which yields, under the percentage formula, 74 per cent. Charleston, on this showing, is 18 per cent above the per cent the percentage formula would give it. Portsmouth and Huntington are 12 per cent above the percentage their short-line distances, thus shown, would afford them. Six points, three of which are Cleveland, Pittsburgh, and Buffalo, N. Y., are correctly located in their percentages groups. Six points are below their percentage according to the formula. The three principal ones are Erie, Pa., Toledo, and Findlay, Ohio. Twenty-five points, which we assume are representative, are not located in groups in strict accord with the percentage formula.

This would indicate that we should have good reason for putting Portsmouth in a lower percentage group lest discrimination be created. Chillicothe and Cincinnati are 3 per cent and Columbus 5 per cent above the formula percentage. But the exhibit also indicates that Portsmouth and Huntington are more markedly raised above what the percentage formula would give them than any other point except Charleston. Apparently when the percentage formula was devised Circleville was computed to be via lines of the Pennsylvania Railroad, 670 miles from New York. Circleville is 69 miles north of Portsmouth and Portsmouth's percentage of the base rates was figured by the use of the mileage via this circuitous route. And this brings us to the question of whether the short-line workable dis-

tance of 651.7 miles is correct. This route is by way of the Baltimore & Ohio Railroad, Portsmouth to Cherry Run, W. Va., 376.7 miles; Western Maryland from that junction to Shippensburg, Pa., 54 miles; Philadelphia & Reading thence to Allentown, Pa., 130.6 miles, and Central of New Jersey beyond to New York, 90.4 miles.

These distances are from the official guide and therefore those traversed by passenger trains. Under the percentage formula this distance produces a per cent of 77.7, which, under the formula rule for the disposition of fractions, becomes 78 per cent. Under the long-and-short-haul provision of the fourth section of the act, complainant contends this per cent should be reduced to 77 per cent, Portsmouth being intermediate to Columbus, a point located in the 77 per cent group, and New York. From distances taken from freight-mileage tables on file with the Commission, defendants state the distance via this route and the same junction points is 676 miles, from which a percentage of 80 per cent would be derived. This route, although workable, is not worked and no rates are published from Portsmouth to New York for application over it. The shortest distance from Portsmouth to New York by way of a working route is 689 miles, Baltimore & Ohio to Martinsburg, W. Va., and thence via the Cumberland Valley to Allentown and the same routing as indicated above beyond. The distance via this route affords Portsmouth a percentage of 81 per cent. The average short-line distance from Portsmouth, Ironton, Kenova, Huntington, and Ashland to New York is 685 miles, which, under the formula, gives 80 per cent. These figures would, of course, be lower if Charleston were included. The bulk of the freight tonnage between Portsmouth and trunk line territory is carried by the Norfolk & Western; the remainder by the Baltimore & Ohio and Chesapeake & Ohio railways. The shortest route of the Norfolk & Western and its connections from Portsmouth to New York is 713 miles, which gives a percentage of 83 per cent.

Defendants assert that complainant in contending for the use of 652 miles as a proper New York distance to be applied under the formula has overlooked the fact that New York is but one of the many points included in the rate adjustment and that while New York is controlling that control should be so exercised as to produce properly related rates. It contends that 732 miles, distance from Portsmouth to New York, via the Norfolk & Western to Circleville, Pennsylvania Company to Pittsburg, and Pennsylvania Railroad beyond, giving a formula percentage of 84 per cent, is the shortest distance that will produce harmonious and properly related rates from Portsmouth. Defendant contends, for example, that if the Chicago-New York rate was \$1, the Portsmouth-New York rate should be 84 cents. The short-line distance from Portsmouth to Al-

bany, N. Y., is 719 miles. Albany takes 96 per cent of the New York rate or 81 cents and that rate would be properly related to the New York rate of 84 cents, but that any percentage under 84 per cent at Portsmouth would result in illogical rates. For example, at 77 per cent the situation would be 77 is to 74 as 652 is to 719, that is, a rate 3 cents lower would apply for a distance 67 miles greater.

Tonnage statements of all freight forwarded from or received at Ashland, Ironton, Kenova, and Portsmouth via the Norfolk & Western and its connections, destined to or originating at points in trunk line territory, during the months of April and September, 1918, showed that such tonnage was carried at rates equivalent to an average formula percentage of 88 per cent. Similar statements were submitted for other defendants. However, no other statements were produced with which these could be compared.

Comparative traffic-density statistics were submitted by complainant which indicate that the volume of tonnage carried by the three principal roads serving Portsmouth has vastly increased since 1889 and that that increase has been proportionately greater than the increase upon other trunk lines operating along the "great channels of through transportation" from central freight association territory to trunk line territory. As this phase of the case has been treated somewhat extensively in the report in the *Huntington Case*, and as total freight-revenue increases followed the trend of the tonnage, it is sufficiently illuminative of the situation to show the number of tons of freight carried 1 mile per mile of road during the fiscal years 1889 and 1914 for the carriers named:

	1889	1914		1889	1914
Chesapeake & Ohio.....	916, 877	3, 011, 617	Pennsylvania R. R.....	2, 397, 851	5, 430, 286
Norfolk & Western.....	1, 201, 918	4, 497, 010	New York Central.....	1, 967, 675	2, 788, 075
Baltimore & Ohio.....	1, 281, 439	2, 997, 966	Erie Railroad.....	1, 904, 892	3, 223, 935

In other words, the Norfolk & Western and the Chesapeake & Ohio of these roads had the least density in 1889. In 1914 the Norfolk & Western's traffic density was only exceeded by that of the Pennsylvania Railroad; that of the Chesapeake & Ohio was greater than that of the Baltimore & Ohio or New York Central and it was almost as great as that of the Erie Railroad. As we have already seen in the *Huntington Case*, defendants indicate that the transportation conditions in the southern Ohio group with respect to the carriage of class and commodity traffic are unfavorable as compared with the transportation conditions in other percentage groups.

Geographically Portsmouth is so located that an average of the short-line distances therefrom to eastern seaboard and interior New

York state points is 587 miles. The short-line distances from Columbus to the same points average 514 miles and from Chicago 751 miles. Using 751 miles as the base average mileage from Chicago and applying the formula thereto would give Portsmouth 83 per cent, Columbus, 76 per cent, a spread of 7 points. In the *Michigan Percentage Cases, supra*, although we reduced the percentages assigned to cities in southern Michigan, in most instances we did not reduce them to such an extent as to place them on the basis which the percentage formula would give them. For example, Battle Creek, 747 miles from New York, under the percentage formula would be in 86 per cent territory. It was put in 92 per cent territory, and Petoskey's percentage was spread 23 points.

The line of the Norfolk & Western from Columbus runs due south through Circleville and Chillicothe, both in 80 per cent territory, then along the Scioto River, through Waverly, Ohio, in 82 per cent territory, and thence directly south to Portsmouth through 87 per cent territory. The line of the Detroit, Toledo & Ironton Railroad crosses the Scioto River at Waverly to Glen Jean, Ohio, runs southeast to Jackson, Ohio, thence northeast to Wellston, Ohio, which portion of its line is in 82 per cent territory. South from Jackson the line of this road extends to Ironton. If the 87 per cent group was split at Portsmouth north along the line of the Norfolk & Western and the Scioto River to Waverly, and the territory east was made 77 per cent territory, percentage groups 78, 80, and 82 would be affected. If Portsmouth was given a percentage relation of 81 per cent, only the points mentioned in 82 per cent territory would be disturbed. No disturbance of other groups would result from a reduction to 82 per cent. Although the defendants consider that the lines serving Cincinnati are stronger than those reaching Portsmouth and the traffic more dense, and that therefore there is no justification for reducing Portsmouth below Cincinnati because of a difference of 71 miles in distance, they believe they could defend a slight reduction in the percentage relation of Portsmouth and the industrial territory eastward of it to Huntington. Industrially, commercially, and geographically this territory is one and any adjustment which is made from any city within the area, all parties are agreed should apply alike to all.

Complainant submitted one witness in respect of the grain situation, the operator of a mill at Waverly, in 82 per cent territory. Since 1903 the grain-rate adjustment from central freight association territory to trunk line territory has been divorced from the percentage adjustment. In lieu thereof 15 numbered groups exist in central freight association territory, the rates from which grade down eastwardly, each group being one-half cent under the contiguous

westward group. In our view the complaint is not sufficiently broad to cover the grain situation and even if it were the testimony is too meager to form a basis for a finding. No reference is made to the grain situation on complainant's brief. The commodity rate on grain, carloads, from Portsmouth to New York is 25.5 cents per 100 pounds, 78 per cent of the sixth-class rate from Portsmouth to New York. The commodity rates from Chicago, Columbus, and Cincinnati are, respectively, 81, 79, and 78 per cent of their sixth-class rates to New York.

The present class rates from Chicago to New York, are, in cents per 100 pounds:

1	2	3	4	5	6
112.5	99	75	52.5	45	37.5

and those from New York to Portsmouth are:

1	2	3	4	5	6
98	85.5	65	45.5	39.5	32.5

Using the short-line distance of 652 miles complainant compares these rates with those which would be applicable under the c. f. a. scale for zone A for a corresponding distance. The rates Portsmouth to New York are the following percentages of the c. f. a. class-rate scale:

1	2	3	4	5	6
108	112	108	100	122	130

whereas, if the same distance and c. f. a. scale rates are used in comparison with the class rates applicable from Circleville to New York, the following percentages result:

1	2	3	4	5	6
101	104	101	98	114	120

The short-line distance from Circleville to New York is 25 miles less than the short-line workable distance from Portsmouth to New York. The earnings per ton per mile which are obtained from the class rates from Portsmouth to New York are higher than similar earnings derived from the class rates to New York from Circleville, Chillicothe, Waverly, Cincinnati, Columbus, Marion, Crestline, Ohio, and Parkersburg, W. Va. The earnings per ton per mile, however, as the rates are the same and the distance is less, from Charleston to New York are higher than from Portsmouth. Based on a distance from Portsmouth of 652 miles the earnings range downward from 30.07 mills, out of the first-class rate, to 9.97 mills, out of the sixth-class rates, while those derived from the class rates from Pittsburgh to New York are, first, 31.55; sixth, 10.52 mills. These are computed upon a distance of 428 miles. If Portsmouth was placed in 78, 80,

81, or 82 per cent territory the class rates would be reduced to the extent shown in the following statement:

	Class-rate reductions, in cents, per 100 pounds.					
	1	2	3	4	5	6
78	10	9	7	4.5	4	3
80	8	6.5	5	3.5	3	2.5
81	7	6	4.5	3	2.5	2
82	5.5	4	3.5	2.5	2	2

Commodity rates for the transportation of certain selected articles which Portsmouth produces and consumes indicate generally that they are related to the class rates which apply to the transportation of those articles in about the same percentages as apply to and from competitive points. For example, the fifth-class basis applies on coffee, carloads, from New York to Portsmouth, Huntington, Cincinnati, Columbus, Parkersburg, and Chicago; on petroleum and its products from New York to Portsmouth, Cincinnati, and Columbus each take 91 per cent of the fifth-class rates; on oranges, grapefruit, and pineapples, Portsmouth, Huntington, and Cincinnati take 92 per cent of the third-class rates and Chicago 80 per cent of that class; on oysters and clams in the shell, Portsmouth, Huntington, Cincinnati, Columbus, and Chicago each take 80 per cent of the third-class rates. But on fruits and vegetables from Baltimore to Portsmouth the fifth-class basis applies, while Cincinnati has a commodity rate of 96 per cent of the fifth class, Columbus 94, and Louisville and Indianapolis, Ind., 95 per cent of the class rate. From New York, Pittsburgh, as representative of certain other points, has commodity rates which are a lower percentage of the class rate than obtains from Portsmouth applicable to the transportation of ferro manganese, ferro silicon, manganese ore, nitrate of soda, mangesite calcined, ferro silicon electrolytic, manganese, chrome ore, and iron ore. Eastbound the commodity rates for the transportation of ammoniacal liquors, of clay, grain by-products, grain, dressed beef, hogs, and sheep, take, from the points exhibited, the same percentage of the class rates as does Portsmouth.

Some adjustments, unexplained of record, as are those upon the steel-mill raw materials above mentioned, give Portsmouth commodity rates which bear a higher percentage relation to the class rates than do the commodity rates on the same articles from competing points. For example, coal tar in tank cars has a commodity rate from Portsmouth which is 92 per cent of the fifth-class rate, 2 per cent less than the percentage which obtains from Chicago, but

Youngstown, Hamilton, Pittsburgh, and Cleveland have commodity rates for the transportation of this commodity which are 74, 73, 73, and 75 per cent of the class rates. These exhibits of commodity rates, as we understand it, are more particularly directed to a showing that the earnings per ton per mile derived from those applicable between Portsmouth and the East are generally higher than the earnings per ton per mile for the transportation of similar articles from or to competing points.

Defendants urge that from complainant's own evidence it is patent Portsmouth has greatly prospered under the existing rate structure. That individual concerns engaged in business at Portsmouth, particularly those having a 77 per cent basis, prospered is evident. The prosperity of the individual concerns may have been due to business acumen. At any rate there is no showing that similar enterprises in competing localities have not equally prospered.

Defendants also emphasize the impropriety of rate reductions now. There is nothing of record to show, as was shown in the *Michigan Percentage Cases, supra*, the lessening of revenue which will result from a lowering of the percentage relation which obtains between Portsmouth and the east. The showing is general and has to do with the financial condition of the principal carriers, defendants herein, which serve Portsmouth either directly or as connecting lines. Appreciating the situation from all its angles, we remark that prior to *The Five Per Cent Case*, 32 I. C. C., 325, the first-class rate was 75 cents per 100 pounds; under *The Fifteen Per Cent Case*, 45 I. C. C., 303, that rate became 90 cents per 100 pounds; under General Order No. 28, it is now \$1.125. In other words, the class rates and many rates related thereto have been increased by at least 50 per cent in less than five years.

The southern Ohio group is about five times as long as it is wide. Unlike nearly all other rate groups in central freight association territory, except the 78 per cent group, the length is east and west. This is probably due to the direction the lines in it run, while in other groups the principal carriers are north-and-south lines. The group extends from 93 per cent territory on the west to the dividing line of central freight association and trunk line territory on the east. The north-and-south line of the Norfolk & Western forms an artificial and the Scioto River a natural line to separate the territory east and that west in the 87 per cent group.

McCHORD, Commissioner:

The exceptions and their argument furnished the Commission with no new data regarding this case. All arguments stressed by both parties were discussed in their briefs and have been set forth in the

foregoing statement. It will be remembered that the record in this case embraces the record in the *Huntington Case*.

From all the facts of record we find that the 87 per cent basis, as applied to traffic between Portsmouth and Ashland and trunk line and New England territories, results in unreasonable and unduly prejudicial charges and that the proper basis, for the future, is 82 per cent subject to the qualification that the rates to and from the ports may be observed as minima at interior points where the haul is greater than that to or from the ports.

An appropriate order will be entered.

57 I. C. C.

No. 10611.

AMERICAN INTERNATIONAL SHIPBUILDING
CORPORATION ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted February 7, 1920. Decided February 17, 1920.

Request for order compelling defendants either to render spotting service at Hog Island shipyard, near Philadelphia, Pa., without charge in addition to the line-haul rates, or to make allowance to complainant therefor, denied. Complaint dismissed.

William Y. C. Anderson and W. C. McNitt for complainant.

George Stuart Patterson, William L. Kinter, and Lemuel B. Schofield for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The United States Shipping Board Emergency Fleet Corporation entered into a contract dated September 13, 1917, with the American International Corporation as its agent, for the construction of a shipyard at Hog Island, Delaware county, near Philadelphia, Pa., and the building at that shipyard of certain vessels. Thereupon, with the consent of the Emergency Fleet Corporation, the American International Shipbuilding Corporation, herein termed the complainant, was organized to carry out this and subsequent contracts.

The complainant alleges that, since March, 1918, it has performed the interchange switching and spotting service in connection with interstate traffic to and from its plant at Hog Island; that the defendants have refused to perform this service or to make any allowance to complainant therefor; that Hog Island is within the Philadelphia rate district; that for industries similarly situated in this district the defendants either render the placing and spotting service or make allowances therefor to the industries; and that by reason of the facts alleged, it has paid charges for transportation which were unreasonable, unjustly discriminatory, and unduly preferential, in violation of sections 1, 2, and 3 of the act to regulate commerce.

Reparation from March 6, 1918, and an order for the future requiring defendants either to perform the service at the line-haul rates or to make allowance therefor are asked.

The Hog Island plant is the largest shipbuilding yard in the world. It is situated on the Delaware River between Philadelphia and Chester, Pa., and has connections with the Philadelphia & Reading Railway, hereinafter called the Reading, and the Pennsylvania Railroad, hereinafter called the Pennsylvania. It is in the Chester district to which apply the same rates as to Philadelphia on long-haul traffic. Its area is about 915 acres on which are between 600 and 700 structures.

Hog Island is what is called a fabricating ship plant. Material is, for the most part, manufactured at other places and assembled at the yard into completed ships. Hence, there are necessary for storage huge yards, in one of which, yard A, there are as many as 9,000 different certified locations for storage of hull steel. The inbound shipments over the rails of both defendant carriers from March 6, 1918, to May 31, 1919, totaled over 45,000 cars. For several months in 1918, the daily average receipt of cars was 140 and at the time of the hearing it was 40. From January 1, 1918, to May 31, 1919, 20,219 loaded cars were delivered to Hog Island by the Pennsylvania, and 32,801 cars by the Reading, or a total of 53,020, about half of which were loaded with steel. The average loading of the inbound cars was from 38 to 40 tons. The outbound shipments between March 6, 1918, and May 31, 1919, were about 1,700 cars.

Within the limits of the plant are 86 miles of standard-gauge single tracks, the curves and gradients of which are built in accordance with the standard railroad practice. These tracks are connected with the tracks of the Pennsylvania at an interchange point where there are two interchange yards for inbound and outbound traffic which have 19 tracks, aggregating approximately 39,200 feet. The entrance to these yards is about 1,600 feet from the trunk line's right of way. The intraplant railways are a complicated set of tracks, crossovers, and switches and reach to all parts of the yard. Tracks extend the full length of each side of the seven piers and for 1,400 feet on each side of every shipway. There are seven principal storage yards, some of which contain as many as 26 tracks with an average length of 2,400 feet. The point nearest to Hog Island on the tracks of the Reading is North Essington, Pa., about 2.2 miles away, on the Chester branch of this carrier. North Essington is also on the Pennsylvania, and from that point to Hog Island the Reading uses the tracks of the Pennsylvania.

To reach Hog Island the Pennsylvania constructed two lines, one from Essington to Hog Island, called the Hog Island branch,

which connects with the main line of the Maryland division of the Philadelphia, Baltimore & Washington Railroad at Essington; the other, called the Sixtieth street branch, which connects with the Maryland division at Sixtieth street, Philadelphia. The Sixtieth street branch is 4.8 miles long and, according to one of defendants' witnesses, cost to build \$1,738,006. At present this branch also serves the Fort Mifflin naval storage yard. Another witness for defendants testified that the Reading had spent up to the time of the hearing \$753,639.29 for improvements and facilities primarily to accommodate Hog Island.

Traffic for Hog Island arriving over the Reading generally reaches the rails of that carrier at points between Harrisburg and Newberry Junction, Pa. It then moves to Belmont, which is in the northwestern section of Philadelphia. There it is picked up by "Darby Creek drag engines" along with other traffic and taken about 13 miles to the Darby Creek yard. At that point the cars for Chester are switched out and those for Hog Island are moved 1,845 feet from the northern end of Darby Creek yard to the inlet switch of the Pennsylvania at North Essington, thence 2.2 miles over the rails of the Pennsylvania to Hog Island interchange tracks.

Originally the shipyard had no sidings. Unloading was done from defendants' main tracks, and cars were placed by defendants' engines. As the plant grew, they continued to place cars "anywhere complainant indicated" without charge in addition to the line-haul rate. On March 5, 1918, the complainant notified defendants by telegrams that, effective March 6, 1918, it had designated interchange tracks at a corner of the plant for the receipt of all carload freight and for the removal of empty cars. These notices were acknowledged by defendants and after that date the cars were delivered to complainant at the interchange tracks. There they were classified and subsequently spotted by complainant's own engines.

There are about 21 principal places of unloading, to which approximately 90 per cent of inbound freight moves, though at times cars are spotted for unloading at 50 or 60 points. The principal unloading places are from 1,200 to 7,500 feet distant from the interchange tracks, the average being 4,450 feet. After unloading, the empty cars are taken by complainant's engines to the outbound interchange tracks.

The complainant owns and operates 15 locomotives in the performance of its intraplant and other switching service, and also 80 locomotive cranes which operate on all the intraplant tracks and at times perform switching service. It also has 466 cars of various kinds.

The complainant is asking for an allowance for one placement of its inbound cars, the placement to be considered as at the head of the tracks in its various storage yards, and the allowance on the basis of the actual cost of the service from March 6, 1918. One of its exhibits gives the average cost of handling a loaded car, received from defendants at the interchange tracks, to the first point of placement within confines of Hog Island shipyard for the period from January 1 to May 31, 1919, as \$2.79. Another exhibit shows it as \$2.86 for May, 1919. In this cost are included the wages of engineers, firemen, hostlers, conductors, brakemen, switchmen, yardmaster and clerks, coal, water, and repairs to locomotives, and depreciation and interest on locomotives. The defendants insist that they could do the spotting at a lower cost; but it does not appear that complainant desires defendants' engines to operate within its plant.

An exhibit of defendants shows 78 instances in which allowances are paid by trunk line carriers to common carriers and industrial railways in trunk line and central freight association territories in varying amounts. Another of their exhibits shows 177 industries on the Pennsylvania, Eastern Lines, which do all of their own spotting with their own power and without allowance. Another exhibit shows a list of 50 industries in the Philadelphia and Chester districts on the Pennsylvania, Eastern Lines, which at present perform spotting, but to which no allowance is made. Another exhibit shows a list of 11 industries on the same lines which do a portion of their spotting with their own power and without allowance. Another exhibit shows 4 shipbuilding plants and 11 other industries on the Reading in the vicinity of Philadelphia which perform their own terminal service without any allowance.

No shipbuilding plant in the Philadelphia rate district receives an allowance for spotting cars from the Pennsylvania. However, at the plant of the Pusey & Jones Company at Gloucester, N. J., which has 15 unloading points and is served by the West Jersey & Seashore Railroad about one-half of the spotting is performed by that carrier without charge in addition to the line-haul rates.

To require the defendants to render the spotting service or to make allowance therefor as requested would be to compel them to provide a substantially greater service at the same rates than they now furnish and would, in effect, be a reduction in the line-haul rates which have not been proven unreasonable. The complainant, as shown above, admitted that it had no competitors. No other shipbuilding plant in the Philadelphia district gets such an allowance. The necessities of shipbuilding on such a large scale require complainant to maintain extensive intraplant railway facilities, and it is primarily in the interest of its own convenience that it spots cars with its own motive power. This intraplant operation, particularly the move-

ment of locomotive cranes, would make it difficult, if not impracticable, for defendants to perform this service with their equipment. The expenses of the defendants incidental to providing adequate connections with the interchange tracks at Hog Island were not inconsiderable and, considering the nature and size of the shipyard, to hold that defendants are obligated to effect delivery at the many points within the plant which the complainant desires, would place upon them an undue burden.

It is recommended that the Commission find:

1. That the service requested by complainant is a spotting service.
2. That the complainant does not compete with any other shipyard on the lines of the defendants.
3. That the tracks extending from the point of interchange to the storage yards and the principal unloading points are used for intraplant movements as well as for the spotting of cars.
4. That the complainant's plant is larger and has a more extensive and complex system of intraplant tracks than any other shipyard or industry appearing of record at which spotting service is performed by the defendants.
5. That the placement of cars at Hog Island would require a more extensive service than is rendered at any shipyard or industry of record at which the defendants spot cars.
6. That large sums have been expended by defendants for facilities and improvements primarily to handle the cars to complainant's plant.
7. That in November, 1917, and in March, 1919, the complainant made application to defendants for terminal allowances.
8. That the complainant designated interchange tracks for the receipt of all carload freight from defendants and for the removal of empty cars after 7 a. m., March 6, 1918.
9. That there is a large number of industries on defendants' lines which perform their own spotting service without compensation from defendants.
10. That neither unjust discrimination nor undue prejudice has been shown.
11. That the defendants' refusal to make complainant an allowance for spotting out of the line-haul rates is not unreasonable.
12. That the line-haul rates have not been shown to be unreasonable.
13. That the defendants have fulfilled their legal obligation as common carriers in respect to delivery by placing the inbound cars on the interchange tracks at complainant's plant and by taking therefrom outbound cars.
14. That the complaint be dismissed.

DANIELS, Commissioner:

The preceding substantially reproduces the examiner's proposed report. Several unimportant alterations have been embodied therein. As thus amended, we find the statement of facts substantiated, and adopt it as our own.

The record displays the rapid transformation of Hog Island from a virtually unutilized tract of land into a complex industrial plant and residential center. When this enterprise was first undertaken, fills had to be made, sewage and water-supply systems installed, and numerous structures built, the latter at various locations. At this stage and for a time thereafter the defendants spotted cars anywhere complainant indicated, and thereafter removed the empties. The industrial plant and associated community structures once built, the conditions affecting terminal services radically changed. As recited in the report, 86 miles of standard-gauge track were laid within the limits of the plant. Fifteen locomotives, 80 locomotive cranes, and 466 cars were installed to cope with the necessities of intraplant operation. The earlier service of the trunk lines as regards spotting was no longer safe, feasible, or economically advantageous to complainant. Accordingly, complainant notified defendants that, effective March 6, 1918, defendants would place inbound cars at a designated point some 1,600 feet or thereabouts from the line-haul carriers' right of way. A similar point was designated from which the defendants were instructed to remove empties. Never thereafter did complainant request defendants to spot cars within the plant at any place beyond the designated interchange points. Never thereafter did complainant request defendants to remove empties from any point other than the outbound interchange point. So far as appears, the defendants were ready and willing to perform a spotting service within the plant. This service the complainant thereafter chose to perform for its own convenience.

Complainant contends, however, that it is entitled to an allowance covering the cost of performing the intraplant spotting service thereafter effected by its own power. The line-haul rate, it contends, covered such service, and it is clear that such service or a similar but less extensive service was originally performed under the line-haul rate.

The changed circumstances and conditions transformed what had been originally a reasonable terminal spotting service into one which was no longer a reasonable service. Complainant's own act in terminating the spotting service originally afforded by defendants evidences beyond question that the continuance of such service was to the plant's own detriment. It would have been attended by serious hazard, and would have obstructed the speedy and economical opera-

tion of the plant. Even the professed willingness at the hearing and upon argument to allow defendants in future to perform a service whose discontinuance was dictated by complainant appears to be hedged about by restrictions and reservations as to the time at which and conditions under which complainant is willing to have it resumed.

We are of opinion and find that the service for which complainant seeks an allowance and for whose past performance it seeks reparation had become, was, and is one which could not and can not reasonably be required of the defendants.

We adopt the proposed findings of the examiner as our own, and the complaint will be dismissed.

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DELRAY CONNECTING RAILROAD COMPANY.

SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted August 9, 1919. Decided February 10, 1920.

Delray Connecting Railroad Company found to be a common carrier of prop-
erty subject to the act to regulate commerce which may lawfully receive
from its trunk line connections divisions of joint rates, or absorptions of
switching charges under appropriate tariffs, such divisions or absorptions
to be reasonable.

Alexis C. Angell for Delray Connecting Railroad Company.

William W. Collin, jr., for New York Central lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

The portion of this proceeding now before us presents for consid-
eration (1) whether or not the Delray Connecting Railroad Com-
pany, at Detroit, Mich., hereinafter called the Delray, was and is a
common carrier in interstate commerce, (2) the nature and extent
of the services rendered to those using its facilities, and (3) whether
or not it may lawfully receive compensation in the form of divisions
of joint rates or absorptions of its switching charges out of through
rates on interstate shipments to and from points on its line. This
report is made after the receipt of the additional information called
for by the Commission's questionnaire of May 29, 1919, which by
consent of parties is made a part of the record herein.

The Delray was organized on March 24, 1904, as a railroad cor-
poration, under the general railroad laws of Michigan with a capital
stock of \$50,000. On February 18, 1916, an increase in capital stock

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to \$1,000,000 was authorized by the state. In January, 1916, the directors of the company had approved the issuance of stock having a par value of \$750,000, and on June 26, 1917, the remainder of the authorized capital stock, having a par value of \$200,000, was issued. Payment for the first and third issues of stock was made in cash and for the second in cash and property. On January 1, 1919, the Solvay Process Company held 5,174 and the Semet-Solvay Company 4,755 of the 10,000 shares of stock outstanding.

Ten of the 11 officers of the Delray also occupy positions with the Solvay Process Company. One, the superintendent, is not connected with the industry and is paid entirely by the railroad. The Delray is operated independently of the controlling industries. It is stated that the Delray is in a position to serve, and through its tariffs offers to serve, anyone seeking to use it.

Annual reports and tariffs are filed with this Commission by the Delray, and it complies with federal and state requirements applicable to common carriers. It has no mail, express, or passenger business and publishes no rates for transportation of freight in less-than-carload quantities.

It has no demurrage tariff, demurrage charges being paid under tariffs of the trunk lines. The Delray collects such charges from industries on its line and transmits to the trunk lines the full amount without deductions. Seven of the industries served have executed the average agreement with the trunk lines, the remainder being on the straight demurrage basis. There is no settlement for detention of cars as between the Delray and its connections. Respondent is a member of the American Railway Association, but not a party to the per diem agreement, its application having been held in abeyance on account of federal control, although approved by its connections.

The equipment operated consists of 7 locomotives, 517 freight cars, and 1 caboose, all of which it owns. Five of the locomotives are six-wheel switch engines, almost identical with those of similar type used by the New York Central. For heavier work the Delray uses two larger eight-wheel switch engines. Three hundred and eighty-six of the freight cars are interchanged with connecting trunk lines.

The length of track operated on December 31, 1918, was:

	Owued.	Leased.	Trackage rights.	Total.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Main track.....	3.18	None.	9.73	12.91
Spurs and sidings.....	11.72	.72	None.	12.44
Total.....	14.90	.72	9.73	25.35

The greater part of the mileage owned is included in what is known as the Brady Island yard. For the leased tracks the Delray pays to the Solvay Process Company \$150 per annum for 0.2 mile of siding leading to the plant of the Barrett company; and \$1,375 per annum for 0.52 mile of track leading to a locomotive house and car-repair shop, and for the use of the house and shop. In March, 1919, the Delray completed a nine-stall locomotive house. The trackage rights mentioned above are over the line of the Detroit, Toledo & Ironton Railroad Company between the Short Cut Canal, near Detroit, and Trenton Junction, compensation being at the rate of \$1 per train-mile.

The Delray's line is for the most part laid with 80-pound rails and is in such condition that it is safe and practicable for trunk line power and equipment to operate over it. Such operation occurs daily.

In addition to the two controlling industries, the Delray serves 11 shippers and receivers of carload freight. One of these, the Superior Sand & Gravel Company, was controlled through stock ownership by officers of the Solvay Process Company at the time of the hearing in October, 1914. It is indicated as an independent industry in the response recently filed. The Delray also has a team track, which is used by several shippers.

The industries served by the Delray are in the southern section of Detroit near the confluence of the Detroit River and the Rouge River. The majority are north and east of the Rouge River, but some are on what is designated interchangeably as Zug or Brady Island, a tract of land bounded by the two rivers and a canal connecting them.

Prior to 1913 the Delray interchanged traffic with four of its trunk line connections—namely, the Michigan Central, the Wabash, the Pere Marquette, and the Detroit & Toledo Shore Line, at points north and east of the Rouge River, interchange with the Detroit, Toledo & Ironton being made on Brady Island. Three of the points of interchange were north of Jefferson avenue, the principal street in that part of Detroit, and the switching operations necessitated frequent crossings of that avenue. Between 1913 and 1916 there was a relocation of tracks, two lift bridges were constructed over the Rouge River, and the yard on Brady Island was greatly enlarged. Since that time cars have been interchanged with the five connecting lines in the Delray's Brady Island yard, although the old junctions have been retained for use if necessary. Traffic from the Michigan Central, the Detroit & Toledo Shore Line, and the Detroit, Toledo & Ironton reaches the yard from the south, while that from the Wabash and Pere Marquette enters the yard from the north, the trunk lines securing access to the Delray's yard over the latter's tracks. This is said to be a more economical method of handling the traffic.

An analysis of traffic and revenues for the calendar year 1918 appears in the margin:¹

Three of the 13 shippers and receivers of carload freight have no industrial tracks or sidings. The tracks of the others range from 0.1 of a mile to 9.5 miles. Four of them have one or more locomotives or locomotive cranes, or both, and the Detroit Edison Company has an incorporated railroad known as the Delray Terminal. The Delray does not operate over the tracks of the Delray Terminal nor over those of the Detroit Iron & Steel Company, but places cars on designated interchange tracks. There is no arrangement between the Delray and any of the industries for the interchange or leasing of cars and it pays nothing for the use of their industry tracks except as described above.

(1)	Number of cars.	Amount of revenue.
Interchange service:		
(a) Between plants of controlling industry and junctions with connecting carriers.	80,833@ \$2.50 per car.....	\$202,062.50
(b) Between plants of affiliated industries and junctions with connecting carriers.	None.....	
(c) Between independent industries and junctions with connecting carriers.	7,735@ \$2.50 per car.....	19,337.50
(d) Between team tracks or freight stations and junctions with connecting carriers.	128@ \$2.50 per car.....	320.00
Plant and interplant service:		
(e) For controlling or affiliated industries.....	14,933@ 2.50 per car.....	37,332.50
(f) For independent industries.....	165@ \$2.50 per car.....	412.50
Local switching:		
(g) Between plants of controlling or affiliated industries, and other industries, team tracks or stations	12@ \$2.50 per car.....	30.00
(h) Between independent industries.....	5,724@ \$3.00 per car.....	17,172.00
(i) Between team tracks or between freight stations	None.....	
(j) Other local switching.....	None.....	
Overhead switching:		
(k) Between trunk lines.....	1@ \$2.50 per car.....	2.50
(l) Between trunk lines and a public wharf or dock served by respondent.	None.....	
Less-than-carload traffic:		
(m) For the controlling or affiliated industries.....	None.....	
(n) For other industries and the public.....	None.....	
Other revenue:		
(o) Passenger revenue.....	None.....	
(p) Mail revenue.....	None.....	
(q) Express revenue.....	None.....	
(r) Miscellaneous revenue, divided between that received from controlling or affiliated industries and that received from the public. (See "Answer," below.)	None.....	

Answer: "Line haul, Sibley, Michigan, to Detroit, Michigan. Quarry products 13,377 cars—911,679.60 tons @ 15¢ ton—\$136,751.94. (All intrastate movements.)"

The line-haul business between Sibley and Detroit during 1918 has not been divided between the controlling or affiliated industries and the public. For the seven months ended December 31, 1915, out of a total of 5,164 cars hauled in this service, 2,921 were for the Solvay Process Company, 949 for the Detroit Iron & Steel Company, and 1,294 for various consignees on the lines of the connecting carriers.

The response to another question shows that interstate shipments were confined to the interchange service, and were as follows:

	Number of cars.	Amount of revenue.
(a) Between plants of controlling industry and junctions with connecting carriers.	54,906	\$137,265.00
(b) Between plants of affiliated industries and junctions with connecting carriers.	None.	
(c) Between independent industries and junctions with connecting carriers.....	5,732	14,455.00
(d) Between team tracks or freight stations and junctions with connecting carriers	128	320.00

The average length of haul on interchange traffic for the controlling industries is 0.615 mile, of which 0.22 mile is over plant tracks; for independent industries having plant tracks about 0.97 mile, of which 0.18 mile is over plant tracks; for industries not having plant tracks, 0.88 mile; and on interchange traffic to and from the team track 1.04 miles.

It is stated that in 1918 the Solvay Process Company completed a 600-foot concrete dock, the only one of its kind on the Detroit River, which is connected with the Delray's tracks. Stone is brought by boat from the Michigan Limestone & Chemical Company plant at Rogers City, Mich., to this dock and over the Delray to the junction with the Michigan Central, which carries it thence to the plant of the Michigan Portland Cement Company at Chelsea, Mich. Arrangements have been made to transport in this manner over 25,000 tons of stone for the blast furnace of the Ford Motor Company and over 11,000 tons have moved. It is said that this may be considered a public dock, since the Solvay Process Company has made contracts for its use with other companies, but apparently it can be used only under special contract. It is not the property of the Delray.

The interchange service performed by the Delray is similar to that done by the trunk lines for industries served by them. An additional charge of \$2.50 per car is made by the Delray where the industry requires a car to be respotted. There is no difference in the manner or extent of the service performed for proprietary and nonproprietary industries.

From 1901 to 1903 an allowance of \$1.05 per car was made by the trunk lines to the Solvay Process Company for every car spotted. The allowance was then stopped. The incorporation of the Delray and the transfer to it of certain tracks and equipment of the Solvay Process Company followed. Early in January, 1905, the Detroit & Toledo Shore Line began to absorb a charge of \$3 per car. Later a tariff was published by the Delray, effective on or about March 20, 1905, providing a charge of \$2 per car, which was absorbed by all connecting lines.

Effective April 1, 1914, the trunk lines discontinued the absorption. On May 1, 1916, they began to absorb \$1.55 per car, computed on the so-called plant-facility basis. The absorption of the full charge of \$2, on the common-carrier basis, was resumed on June 16, 1916. During the period from May 1 to June 16, 1916, the Delray collected the balance of its charge (45 cents) from the various shippers in addition to the line-haul rate.

Effective July 1, 1917, the Delray increased its charge for interchange and intraplant switching to \$2.50, and for the switching of coke between the Samet-Solvay Company and the Detroit Iron & 57 I. C. C.

Steel Company from \$2.50 to \$3 per car. It is stated that these increases were made to cover the actual cost of performing the service. No increase in the absorption on interchange traffic has been made by the trunk lines. The excess of the charge over the absorption is paid by the industries served.

The minimum charge for switching by trunk lines in the Detroit district is \$4 per car. This is the charge of the Wabash, which does little switching, the other roads making a minimum charge of \$5.

The Delray shows a book value of \$1,368,177.73, distributed as shown in the margin.¹ The values as given are original cost, except as to property valued at \$529,267.08 in 1916, when it was received from the Solvay Process Company in part payment for the second issue of stock, referred to above.

The record contains a copy of the valuation made in February, 1916, by two members of the faculty of the University of Michigan for the Michigan Railroad Commission, together with the letter of transmittal to that commission. In this letter it is stated that the valuation occupied only five days, which was regarded as insufficient, but that "in view of the conservatism of this appraisal * * * the results submitted, while they represent approximately the investment, probably err in being too low."

In this valuation the cost of reproduction new was given as \$763,284, and this cost less depreciation as \$731,497. The property in general was said to be nearly new. There was no full analysis of unit costs or overhead charges. The latter were taken in the aggregate as 17.5 per cent, to apply to all items except land, bridges, and equipment. Five per cent was added to the bridges for supervision during design and erection. Five per cent was added to the total to cover organization, administration, and legal expense, general engineering and interest during construction. The letter of transmittal concluded—

Had these items been separated out, and had working capital, stores and supplies been added I think without doubt the total would have easily reached \$800,000.

The total mileage included was approximately 11 miles, and the valuation covered 5 locomotives and 189 freight cars.

It should be noted that this valuation was made in connection with the increase in outstanding capital stock from \$50,000 to \$800,000, par value. Subsequently, in June, 1917, capital stock having a par value

¹ Road.....	\$577,987.01
Steam locomotives.....	107,294.14
Freight-train cars.....	607,831.45
Miscellaneous equipment.....	500.00
General expenditure.....	1,478.17
Material and supplies.....	73,086.96
Total.....	1,368,177.73
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of \$200,000 was issued for the purposes, as stated in the annual report, of "Additional investment, Purchase of New Cars, etc."

In the margin is a comparison between the values placed upon certain items by the Solvay Process Company and the Delray in issuing stock and those reached in the valuation for the Michigan commission.¹ In connection with this comparison it should be stated that in the valuation for the Michigan commission a considerably higher value was assigned to the land than had been placed upon it by the Solvay company and the Delray. These differences, applied to 1.36 acres north of the Rouge River and 28.19 acres on Brady Island which were transferred in exchange for stock, would have increased the value of the land transferred by \$47,045, or considerably more than the difference in the valuations of the cars and structures shown in the marginal note.

For the purpose of determining the cost of performing each kind of service, the Delray has assigned to each branch the physical property used in that particular service. Where property is employed in more than one class of service it has been apportioned in accordance with the extent of its use in each class. In apportioning the value of property used in the different kinds of switching service, and in dividing common expenses, the allocation was made upon the basis of the number of cars handled, the engine-hour basis being impracticable for application to the Delray according to the statement on its behalf.

The property of the Delray, excluding material and supplies, was apportioned as follows:

Sibley line-haul freight.....	\$46, 496. 09
Switching:	
Interchange.....	547, 760. 13
Intraplant.....	65, 557. 53
Coke to Detroit Iron & Steel Co.....	24, 797. 85
Equipment covered by car rentals.....	610, 479. 17
Total book value.....	1, 295, 090. 77

(9)	Value assigned by the Solvay Process Company and Delray.	Valuation for Michigan commission.	
		Cost of reproduction	Cost of reproduction less depreciation
Two rolling lift bridges.....	\$244, 000	\$231, 839	\$231, 939
Two track scales.....	11, 390	10, 342	9, 825
Fuel station.....	1, 370	1, 350	1, 282
Locomotive standpipe.....	460	460	437
56 wood gondola cars.....	24, 696	24, 696	20, 765
56 wood coke cars.....	24, 696	24, 696	20, 765
52 steel gondola cars.....	62, 530	62, 530	57, 067
26 steel rock cars.....	22, 691	22, 691	20, 734
	391, 823	378, 604	362, 704

The principal item of equipment is the book value of the Delray's cars—\$607,831.45. It is stated that some of the trunk lines objected to the inclusion of the cars and therefore their value was excluded and shown as a separate item. Operating expenses were distributed in a similar manner.

The following table summarizes the cost figures for the switching service for the year 1918:

	Interchange.	Intraplant.	Coke to Detroit Iron & Steel Company.	Total switching.
Total expenses ¹	\$306,253.45	\$49,797.67	\$18,335.61	\$374,886.93
Cars handled.....	88,696	15,110	5,724	109,530
Per cent of cars.....	80.98	13.80	5.22	100
Average cost per car.....	\$3.453	\$3.296	\$3.291	\$3.423

¹ Including operating expenses, railway tax accruals, and interest on investment at 6 per cent per annum less 6 per cent depreciation on bridges, buildings, and equipment.

The cost of handling the Sibley traffic is not stated, but from the figures given, and using the same methods, it appears to be approximately \$3.479 per car, or 5.1 cents per ton.

If the book value of the cars is included, using for convenience the method followed by the Delray as to other property, and taxes and operating expenses chargeable to the cars are considered, the cost of service would be increased approximately \$1.12 per car.

In the margin appear figures taken from the income account for the years specified, as shown in the annual reports.¹ The Delray has never paid a dividend.

Seven of the industries served by the Delray can be served by one or more trunk lines over the rails of the latter or by trackage rights over the Delray, for which no charge is made. Apparently on certain traffic moving over the Pere Marquette and the Wabash the

(c)	1916	1917	1918
Railway operating revenues.....	\$296,962.89	\$382,581.00	\$413,583.94
Railway operating expenses.....	251,585.89	356,866.88	451,583.06
Net revenue from railway operations.....	45,377.00	25,714.12	\$ 37,999.12
Railway tax accruals.....	8,255.34	5,740.33	33,665.43
Uncollectible railway revenues.....	4.00	12.50	71,664.55
Railway operating income.....	37,117.66	19,961.29	\$71,694.55
Total operating income.....	37,117.66	19,961.29	\$71,694.55
Hire of freight cars—credit balance.....	.....	104,831.63	135,218.04
Other nonoperating income.....	.....	2,603.28	4,108.64
Total nonoperating income.....	3,993.49	107,434.80	139,326.68
Gross income.....	41,111.15	127,496.09	66,762.13
Hire of freight cars—debit balance.....	2,845.36	.....	.....
Other deductions from gross income.....	25,635.43	.....	.....
Total deductions from gross income.....	28,480.79	7,306.51	5,054.80
Net income.....	12,630.36	120,189.58	61,607.33
Income balance transferred to profit and loss.....	12,630.36	120,189.58	61,607.33

• Deficit.

trunk line engines in going to and from the Brady Island yard haul cars past the industries to or from which they are consigned. The record does not disclose whether or not as a practical operating matter it is necessary or desirable for the trunk lines to use the services and facilities of the Delray in serving industries reached by the latter, or to what extent, if at all, the trunk lines perform such service without the interposition of the Delray.

Accepting the Delray's cost figures as at least indicative of the cost of service, it is evident that only the Sibley line-haul traffic is remunerative, the various classes of switching being performed at less than cost. For example, excluding any return upon the investment in cars, the cost of handling the intraplant traffic is stated as \$3.296 per car, and of the coke to the Detroit Iron & Steel Company as \$3.291 per car, as against charges of \$2.50 and \$3 per car, respectively. Apparently these are purely local services and whatever merit might lie in a contention that the value of the cars used should not be considered in connection with interchange traffic would seem to have no application to a service performed entirely by the Delray and in connection with which no car rental, presumably, would be paid to it. Both the intraplant and the coke traffic are exclusively intrastate.

Apparently the interchange switching is also performed for less than cost. The comparatively favorable net income for the past two years is largely attributable to the item, "Hire of freight cars—Credit balance."

Upon the record we are of opinion and find that the Delray Connecting Railroad Company was and is a common carrier of property subject to the act to regulate commerce, and may lawfully receive from its trunk line connections divisions of joint rates or absorptions of switching charges, under appropriate tariffs, such divisions or absorptions to be reasonable. Assuming that the services of the Delray are not employed where sound operating practice and the public interest would require the trunk lines themselves to perform the spotting service, it is clear that the present absorptions of the Delray's switching charges are not excessive. In the absence of more precise data, particularly with regard to the items under the heading "Equipment covered by car rentals," the present record does not afford a basis for stating the maximum amount which may properly be paid to the Delray by the trunk lines out of the line-haul rates.

No order is necessary.

EASTMAN, Commissioner, dissenting in part:

The opinion of the majority is in accord with *National Tube Co. v. L. T. R. R. Co.*, 55 I. C. C., 469, which was decided by the full Com-
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mission. In that case I filed a separate dissenting opinion, 56 I. C. C., 272, and following the views there expressed, I am of the opinion that the interchange switching service performed by the Delray for the controlling industries and, perhaps, for certain of the independent industries as well is, in part at least, a plant service for which it may not lawfully receive from its trunk line connections divisions of joint rates or absorptions of switching charges.

By the Commission, Division 8.

57 I. C. C.

No. 10496.

MERIDIAN TRAFFIC BUREAU

v.

DIRECTOR GENERAL, CINCINNATI, NEW ORLEANS &
TEXAS PACIFIC RAILWAY COMPANY, ET AL.

No. 10344.

HANNAH DISTRIBUTING COMPANY ET AL.

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted December 10, 1919. Decided February 10, 1920.

1. Class and commodity rates from Ohio and Mississippi river crossings, Chicago, Ill., and related points found to be unduly prejudicial to Meridian, Miss., and unduly preferential of New Orleans, La., Mobile, Ala., and Vicksburg, Miss.
2. Class rates from Chicago and Cairo, Ill., St. Louis, Mo., and Louisville, Ky., and rates on grain and grain products from Cairo and St. Louis found to be unduly prejudicial to Jackson, Miss., and unduly preferential of New Orleans, La., and Vicksburg and Natchez, Miss.
3. The revision of rates necessitated by denial, in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, of applications for permission to maintain rates from St. Louis, Mo., to New Orleans, La., lower than those applicable from, to, or between intermediate points will go far to remove the cause of complaint; therefore no orders are necessary at this time.

C. W. Hayward and *Otis B. Kent* for complainant in No. 10496; and *George Butler* and *W. D. Hannah* for complainants in No. 10344.

Chas. J. Rixey, jr., *R. V. Fletcher*, *Charles N. Burch*, and *Nelson W. Proctor* for defendants.

Blewett Lee for Illinois Central Railroad Company.

Charles E. Cotterill for Memphis Freight Bureau, New Orleans Joint Traffic Bureau, Mobile Chamber of Commerce, and others, interveners in No. 10496.

Carl Giessow and *Edgar Moulton* for New Orleans Joint Traffic Bureau; *B. F. Martin* for Natchez Chamber of Commerce and Vicksburg Board of Trade; *A. J. McGehee* for Southern Interior Traffic Association; *John B. Rucker* for Baton Rouge Chamber of Commerce; *R. G. Cobb* for Mobile Chamber of Commerce; *J. B. McGinnis* for Memphis Merchants' Exchange; *Herbert Stanley* for 57 I. C. C.

Greenville, Miss., Chamber of Commerce; *M. W. Martin* for Helena Traffic Bureau; *A. W. Vandergrift* for Louisville Board of Trade; *M. M. Caskie* for Montgomery Chamber of Commerce; *James S. Davant* for Memphis Freight Bureau; and *Deane Noel* for Goyer Company, Greenville, Miss., interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, WOOLLEY, AND EASTMAN.

WOOLLEY, *Commissioner*:

These cases were argued together, upon proposed reports prepared by examiners, and in view of the conclusions reached they will be disposed of in one report. Rates are stated in amounts per 100 pounds.

Complainant in No. 10496 is a voluntary association of shippers and receivers of freight of the city of Meridian, Miss. It alleges that the class and commodity rates maintained by defendants from Mississippi and Ohio river crossings, Chicago, Ill., and related points to Meridian, Miss., are unjustly discriminatory and unduly prejudicial to Meridian and unduly preferential of New Orleans, La., Mobile, Ala., and Vicksburg, Miss., in violation of sections 2 and 3 of the act to regulate commerce and unjust in violation of section 10 of the federal control act.

Complaint in No. 10344 was filed by certain wholesale grocers, grain dealers, and a manufacturer of mixed feeds, all of Jackson, Miss. The allegations are that the class rates from Chicago and Cairo, Ill., St. Louis, Mo., and Louisville, Ky., to Jackson, and local and reshipping rates on grain, grain products, and flour from St. Louis and Cairo to Jackson are unjustly discriminatory and unduly prejudicial to complainants and unduly preferential of their competitors located at New Orleans, La., and Vicksburg and Natchez, Miss., in violation of sections 2 and 3 of the act to regulate commerce, and unjust in violation of section 10 of the federal control act. It is also alleged that the rates to Jackson are in violation of the long-and-short-haul provision of section 4 of the act to regulate commerce in that they are higher than corresponding rates from the points of origin through Jackson to the three alleged favored points.

Meridian and Jackson, the latter the capital of the state, are important jobbing points situated in the middle and middle eastern sections of Mississippi. The former is 522 miles south of St. Louis and 135 miles north of Mobile, via the Mobile & Ohio, and 202 miles northeast of New Orleans, via the New Orleans & Northeastern. The latter is 526 miles south of St. Louis and 183 miles north of New Orleans, via the Illinois Central. The two points are 140 and 43 miles, respectively, east of Vicksburg, via the Alabama & Vicksburg.

Class and commodity rates from the points of origin involved to Meridian and Jackson are considerably higher than to the points alleged to be favored. The class rates from St. Louis may be taken as representative. Prior to June 25, 1918, the class rates from St. Louis to the complaining points and to Vicksburg, Natchez, New Orleans, and Mobile, the four last-named points being grouped with respect to all of the rates in issue, were:

To—	1	2	3	4	5	6	A	B	C	D
Meridian-----	115	98	82	69	56	47	40	47	37	31
Jackson-----										
Vicksburg-----										
Natchez-----	90	75	65	50	40	35	25	38	25	20
New Orleans-----										
Mobile-----										
Difference-----	25	23	17	19	16	12	15	9	12	11

These rates remained in effect until June 25, 1918, when they were increased under the authority of General Order No. 28 of the Director General of Railroads, and the following rates, which are still in effect, were established:

To—	1	2	3	4	5	6	A	B	C	D
Meridian-----	144	122½	102½	86½	70	59	50	59	46½	39
Jackson-----										
Vicksburg-----										
Natchez-----	112½	94	81½	62½	50	44	31½	47½	31½	25
New Orleans-----										
Mobile-----										
Difference--	31½	28½	21	24	20	15	18½	11½	15	14

The situation is similar with respect to the commodity rates in issue. For example, the present reshipping rates on grain and grain products from St. Louis, upon which the traffic actually moves, are 25 cents to Meridian and Jackson and 15 cents to New Orleans and grouped points. Rates from the points of origin to New Orleans, Vicksburg, Natchez, and Mobile apply through Meridian and Jackson.

Complainants are in keen competition with jobbers located at the river cities and at Mobile. From Vicksburg and Natchez the outbound rates are on the same scale as from Jackson. With the more favorable inbound rates complainants' competitors at Vicksburg and Natchez can ship grain and grain products, for example, in carload lots from St. Louis and distribute in less-than-carload quantities to points in the immediate vicinity of Jackson at a much lower total transportation cost than can complainants. Indeed, it appears that Vicksburg dealers can and do buy flour in carloads at St. Louis and sell it in small quantities to retail dealers in Jackson at the same

transportation cost as complainants must pay to get their carload shipments delivered in Jackson. New Orleans has a similar advantage at points south of Jackson on the main line of the Illinois Central. The rate situation at Meridian is substantially similar.

The departures from the long-and-short-haul provision of the fourth section of the act which exist in the present adjustment of rates were authorized by us in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61. This authority was granted mainly because of strong potential water competition. In the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, a number of the fourth section applications upon which relief was granted in the case cited were reconsidered and denied, effective April 1, 1920. Among these were applications for permission to maintain rates from St. Louis and New Orleans to Memphis and from St. Louis and Memphis to New Orleans lower than rates from, to, or between intermediate points. Our findings of fact in the *Memphis-Southwestern Investigation* as to the amount of competition by boats upon the Mississippi River are confirmed by the records in these cases; they are as follows:

For more than 25 years there has been no through boat service between St. Louis and New Orleans except at rare intervals. At the present time there is not a boat operating between those points except the fleet operated by the United States Railroad Administration, which consists of five towboats and a number of barges. These boats run on a regular weekly schedule between St. Louis and New Orleans, stopping only at Memphis. It is planned to make stops at other river points as soon as necessary arrangements can be made. Grain is the most important commodity handled southbound, but there is a movement of merchandise traffic. Northbound the movement consists principally of sugar, coffee, and general merchandise.

The record does not show to what extent, if any, the United States Railroad Administration plans further to develop water-borne commerce on the Mississippi River. An impression prevailed generally at the hearing, however, that it is planned to develop this commerce on an extensive scale. The record shows that cities along the river are spending or planning to spend large sums of money for the acquisition and construction of water-front facilities to accommodate a greatly increased movement of water-borne freight, and it is clearly the expectation of those familiar with the situation that there will be within the next year or two an unprecedented increase in the river traffic. It is expected, however, that all of the freight moving on the river will be handled by the government's line. So far as the record shows, no new independent lines are planned.

Aside from the fleet operated by the government there is little traffic now moving on the Mississippi River. The through independent boat service is not of such a character as to compel the depression of the all-rail rates between river points.

In denying the applications we stated that:

* * * The question as to the reasonableness of the rates in the territory east of the Mississippi River has not been adequately considered, and nothing

said herein is to be regarded as a definitive finding as to the proper level of those rates. The denial orders to be entered are not in keeping with our previous permissive orders relating to rates at points on the Mississippi River. If these denial orders were to become effective, certain other points would continue to enjoy rates deviating from the long-and-short-haul rule of the fourth section. This would create a rate maladjustment which seemingly ought to be avoided. Sufficient time, therefore, before the effective date of the denial orders to be entered herein will be given to afford interested parties opportunity to bring to our attention the reasons, if any, for the reconsideration of outstanding permissive orders according relief from the long-and-short-haul rule of the fourth section.

In these cases the complaints bring in issue rates not only from St. Louis but also from Chicago, from Ohio River crossings, and from Cairo and other Mississippi River crossings, and related points. Upon consideration of all of the facts of record we are of opinion, and find, that the present adjustment of rates set forth in the complaints subjects Meridian and Jackson, and their shippers, to undue prejudice and disadvantage and unduly prefers Mobile and the Mississippi River cities named. In view of the apparent necessity for a general rate revision it will be unnecessary to enter orders herein at this time. It is obvious that a revision of rates to conform with the fourth section requirements will go far to remove the cause of complaint. This was definitely so stated by counsel for complainant in No. 10496. Should the readjustment not accomplish the results anticipated, the matter may be brought to our attention for further action.

57 I. C. C.

No. 10017.

CHAMBER OF COMMERCE, MOSS POINT, MISS., ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted November 19, 1919. Decided February 17, 1920.

Upon complaint alleging Pascagoula and Moss Point, Miss., to be unduly prejudiced by rates higher than those applicable on traffic to or from New Orleans, La., Gulfport, Miss., and Mobile, Ala.; *Held*, That the undue prejudice exists as to certain points of origin and destination and must be removed.

G. F. Thomas for complainants.

Charles D. Drayton, Edward D. Mohr, and C. W. Owen for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Commissioner*:

The complaint in this case was filed by the commercial and industrial interests of Pascagoula and Moss Point, Miss. It asks that these two places be accorded interstate rates to and from practically all points in the country not in excess of the rates contemporaneously charged from and to New Orleans, La., Gulfport, Miss., and Mobile, Ala., which three cities, as to much of their traffic, are in one and the same rate group. The purpose of the complaint is to secure for Pascagoula and Moss Point the New Orleans rates where such rates are accorded Gulfport and Mobile. The present adjustment is alleged to operate to the undue prejudice of Pascagoula and Moss Point and to undue preference of the other three points above named. At the hearing an allegation that the rates were unreasonable was withdrawn, and complainants disclaimed any attack on the rates on lumber. Reparation is asked, but there is no proof respecting damage such as the law requires. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184.

Since the hearing the rates involved have been superseded by rates initiated by the Director General of Railroads, and by supplemental complaint he was made a party defendant. He answered, but no further hearing was asked or had.

Pascagoula and Moss Point, constituting practically one community, are situated on the Gulf coast at or near the mouth of the Pascagoula River, 100 miles east of New Orleans, 41 miles west of Mobile, and about midway between Mobile and Gulfport. Pascagoula is directly at the mouth of the Pascagoula River, and is served by the main line of the Louisville & Nashville Railroad, operating east and west along the coast, and by the Alabama & Mississippi Railroad, which runs northeast a distance of 83 miles to Vinegar Bend, Ala., where it connects with the Mobile & Ohio Railroad. Pascagoula has several shipyards. Moss Point is 7 miles up the Pascagoula River at the junction of the Dog River, but by railroad it is only 4 miles from Pascagoula. It, also, has shipyards, and in addition several sawmills which manufacture lumber from logs floated down the rivers, and a wood-pulp paper mill which uses the refuse from the sawmills. It is served only by the Alabama & Mississippi Railroad, and by the Pascagoula Street Railway & Power Company, which connects with the Louisville & Nashville. The paper mill is served by a switch of the Louisville & Nashville from Kreole, Miss., a point near Pascagoula. Both cities have port facilities and are reached by ocean vessels which take on cargoes of locally produced lumber. The coastal waters in this vicinity are in places rather shallow, with sand bars obstructing deep-water navigation. The United States government since 1889 has spent about a million and a quarter dollars in deepening and widening the channel leading to the deep waters of the Gulf. At the time of the hearing the work of increasing the depth of the channel was almost completed. The city of Pascagoula has purchased for public docks about 800 feet of water front on the channel, at a cost of about \$17,000, and arrangements are being made for railroad connection with these docks. Similar preparations are under way at Moss Point. Most of the shipyards at these places, some of which are newly constructed and expected to be permanent institutions, at the time of the hearing were building ships for the Emergency Fleet Corporation. In 1917 each city had a population of between three and four thousand, but the increased shipbuilding activity has brought several thousand additional inhabitants. The Pascagoula River is navigable for a distance of 55 miles from its mouth for boats having a draft not in excess of 9 feet.

The complaint, as stated, brings in issue the rates both to and from Pascagoula and Moss Point, but the shipbuilders are the principal parties directly interested, and their only traffic is inbound. Except for shipments of such commodities as structural steel, and engines and boilers to be used in the ships that are being built, and food and

supplies for the inhabitants, comparatively little rail traffic moves to these points. They have practically no outbound traffic except lumber which moves by water.

The rates to Pascagoula and Moss Point are relatively so high that the shipbuilders in most cases find they can secure cheaper transportation by moving their traffic from points in the north and east by rail to Gulfport or Mobile and barging it from those ports.

One large shipbuilding concern after securing options on property at various southern ports, including Pascagoula, finally decided to locate at Mobile. There is evidence tending to show that the relatively higher freight rates charged Pascagoula than Mobile were at least a contributing cause of Pascagoula's failure to secure the plant. The decision of this concern to locate at Mobile was made after the Louisville & Nashville had expressed its willingness to reduce the carload rates on structural steel from Pittsburgh, Pa., and Chicago, Ill., to Pascagoula so that they would exceed the rates to Mobile by only 6 cents per 100 pounds. The other shipbuilders when they located at Pascagoula appear to have left the matter of freight rates for settlement later. It was stated at the hearing that two wholesale houses were awaiting the outcome of this case before deciding whether they will locate at Pascagoula or at some other point.

In setting forth the rates we shall use those in effect at the time of the hearing. The only substantial change since that time has been the increase, generally of 25 per cent, made in accordance with General Order No. 28 of the Director General and amendments thereof. All rates are stated herein in cents per 100 pounds.

In the table below are shown the through rates from Cincinnati, Ohio, which may be taken as representative of some of the principal rates involved.

	To Moss Point.	To Pascagoula.	To New Orleans, Mobile, and Gulfport
First class.....	134	127	98
Second class.....	113	106	83
Third class.....	88	82	73
Fourth class.....	79	73	54
Fifth class.....	68	62	44
Sixth class.....	61	56	39
Class A.....	47	45	28
Class B (carloads).....	55	53	41
Class C (carloads).....	36	33	27
Class D (carloads).....	30	29	22

Many of the rates to and from Pascagoula and Moss Point, particularly for long hauls, such as between Ohio River crossings and these points, are based on the New Orleans or Mobile combinations. In such instances the local rates between Pascagoula and Moss

Point on the one hand and New Orleans or Mobile on the other are the measure of the disparities suffered by the two complaining places. Most of the differences evidenced by the above table are due to this method of building the rates.

As to the rates between Pascagoula and Moss Point and points in the southeast the disparities are less marked. This is shown in the table following. The rates are to Atlanta, Ga., and are used as representative.

	From Moss Point.	From Pasca- goula.	From Mobile.	From New Orleans.
First class.....	116	100	97	107
Second class.....	99	92	82	92
Third class.....	78	72	71	81
Fourth class.....	70	64	58	68
Fifth class.....	62	56	51	56
Sixth class.....	54	49	41	46
Class A.....	44	42	28	32
Class B.....	51	49	34	38
Class C.....	42	39	25	29
Class D.....	28	27	21	25

Proportional rates on grain and hay from Kansas City, Mo., are shown below:

	To Moss Point.	To Pasca- goula.	To New Orleans and Mobile.
Wheat.....	28	29	20
Corn.....	27	26	19
Hay.....	33.5	33.5	25.5

The differences in favor of New Orleans and Mobile on these commodities are said to discourage and in fact to make impossible the establishment of a grain and hay business at Pascagoula or Moss Point.

The rates to all points along the line of the Louisville & Nashville between New Orleans and Mobile are made in substantially the same manner as the rates to Pascagoula and Moss Point, except that Gulfport, through the action of the Gulf & Ship Island Railroad, has been placed upon a rate parity with New Orleans and Mobile.

The carriers offered evidence to show that the factors applying between the basing points, namely, New Orleans and Mobile on the one hand, and Pascagoula and Moss Point on the other, are depressed below the reasonable level. It is testified that before Pascagoula and Moss Point were served by railroads their supplies were brought in by lumber schooners from New Orleans and Mobile, and that the rates for the movement of the same traffic by rail from New Orleans and Mobile were made with the competition of the coastwise vessels

in mind. These rates which as above indicated are factors in the through rates, are as follows:

Class-----	1	2	3	4	5	6	A	B	C	D
Pascagoula--	29	25	22	19	18	17	17	17	11	9
Moss Point--	36	32	28	25	24	22	19	19	12	8

To prove that these factors, as applying to the hauls of approximately 100 miles from New Orleans, are abnormally low, it was pointed out that they are about the same as apply from New Orleans to Dunbar, Miss., for a distance of 36 miles. If what defendants call their normal basis of rates were applied in lieu of the above scales, the first-class rate from New Orleans to Pascagoula would be 45 cents instead of 29 cents. The rates from Gulfport to Pascagoula for a distance of 32 miles are 3 cents higher on first class than the rates from New Orleans to Pascagoula for a distance of about 100 miles. This deviation from the requirement of the fourth section should be corrected. As applied from Mobile, the above scales are in line with other rates in the same general territory for equal distances.

Defendants urge that the record does not afford any basis for a finding that the conditions affecting the rates to and from Pascagoula are substantially similar to those affecting the rates to and from New Orleans, Gulfport, and Mobile. They say, therefore, that should they voluntarily accord Pascagoula the rates sought they would have no justification for maintaining higher rates at intermediate points. The maintenance of lower rates to and from New Orleans, Gulfport, and Mobile than to and from intermediate points is authorized in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. In our report therein the circumstances and conditions which led to the establishment of lower rates at New Orleans, Gulfport, and Mobile are quite fully detailed. This authority was granted mainly because of strong potential water competition at New Orleans and Mobile.

The examiner in a proposed report served upon the parties recommended a finding that the allegations of the complaint had not been sustained. He pointed out that the adjustment sought by complainants could not be had without making extensive rate changes; and, while recognizing that changed conditions might eventually make advisable some readjustment of the rates to and from this general territory, urged that we should not decide upon such a radical readjustment as complainants ask except in a more comprehensive proceeding.

In *Memphis-Southwestern Investigation*, 55 I. C. C., 515, decided December 2, 1919, subsequent to the submission of this case, we found that there is no longer any water competition of such a character as to compel the depression of the all-rail rates between Mississippi River points and accordingly denied relief from the long-and-short

haul provision of the fourth section between New Orleans and points on the Mississippi River, St. Louis, Mo., and south, to the extent there in issue. In denying the applications we stated that:

The question as to the reasonableness of the rates in the territory east of the Mississippi River has not been adequately considered, and nothing said herein is to be regarded as a definitive finding as to the proper level of those rates. The denial orders to be entered are not in keeping with our previous permissive orders relating to rates at points on the Mississippi River. If these denial orders were to become effective, certain other points would continue to enjoy rates deviating from the long-and-short-haul rule of the fourth section. This would create a rate maladjustment which seemingly ought to be avoided. Sufficient time, therefore, before the effective date of the denial orders to be entered herein will be given to afford interested parties opportunity to bring to our attention the reasons, if any, for the reconsideration of outstanding permissive orders according relief from the long-and-short-haul rule of the fourth section.

In *Meridian Traffic Bureau v. Director General*, 57 I. C. C., 107, we found, among other things, that the maintenance of lower rates from Chicago and from Ohio and Mississippi river crossings and related points to New Orleans, Mobile, and Vicksburg, Miss., than to Meridian, Miss., an intermediate point, was unduly prejudicial to the latter point. In view of the apparent necessity for a general rate revision as a result of our decision in *Memphis-Southwestern Investigation*, *supra*, no order for the future was entered, it appearing that a revision of rates to conform to the fourth section requirements would go far to remove the cause of complaint.

The findings of fact in the *Memphis-Southwestern Investigation*, *supra*, with respect to water competition on the Mississippi River are also supported by the record in this case. With the elimination of compelling water competition affecting the rates between Ohio and Mississippi river crossings, Chicago, and related points, on the one hand, and New Orleans and Mobile on the other, there is no longer any justification for the maintenance of higher rates to and from Pascagoula with respect to such traffic. As to traffic to and from Atlanta, Ga., Chattanooga, Tenn., and Knoxville, Tenn., from and to Pascagoula defendants concede that no higher rates are justified at Pascagoula than at New Orleans and Gulfport. Moss Point should be accorded no higher rates than Pascagoula.

Upon the facts of record we find that defendants' class and commodity rates, except commodity rates on lumber, between Pascagoula and Moss Point, on the one hand, and Ohio River crossings and Mississippi River crossings north of Memphis, Tenn., Chicago, and related points, on the other, are and for the future will be unduly prejudicial to the extent that they exceed or may exceed corresponding rates contemporaneously maintained between the last-named points, on the one hand, and New Orleans, Mobile, and Gulf-

port on the other hand; and that the rates assailed to and from Atlanta, Chattanooga, and Knoxville are and for the future will be unduly prejudicial to the extent that they exceed or may exceed the corresponding rates contemporaneously maintained to or from New Orleans or Gulfport from or to Atlanta, Chattanooga, and Knoxville. In readjusting their rates to and from Atlanta, Chattanooga, and Knoxville defendants should also make a like readjustment of the rates to and from other points similarly situated with respect to New Orleans. Our conclusions herein and the general readjustment of rates required following our decision in the *Memphis-Southwestern Investigation, supra*, may result in according like relief to complainants with respect to traffic to and from other points, but we are not prepared on the present record to make a finding of undue prejudice in the rates accorded Pascagoula and Moss Point from other territories of origin as compared with those accorded New Orleans, Mobile, and Gulfport.

It was incidentally developed at the hearing that the rates from New York, N. Y., Baltimore, Md., and New England points to Pascagoula exceeded the Mobile or Gulfport combinations by 3 cents on first class and 2 cents on several of the lower classes. These rates must be brought into conformity with the requirements of the fourth section of the act as to aggregates of intermediate rates.

An appropriate order will be entered.

57 I. C. C.

No. 9711.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF IOWA ET AL.

v.

QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted March 8, 1919. Decided February 17, 1920.

Carload rates on walnut logs from points in northern Missouri to Des Moines, Iowa, not found to have been or to be unreasonable or otherwise unlawful. Complaint dismissed.

J. H. Henderson and Walter Condram for complainants; and *E. G. Wylie* for Des Moines Saw Mill Company.

M. K. Bush and H. A. Pence for Chicago, Burlington & Quincy Railroad Company; *R. G. Brown* for Chicago, Rock Island & Pacific Railway Company; *B. F. Parsons* for Chicago Great Western Railroad Company; *Thomas R. Farrell* for Wabash Railway Company; *J. W. Allen* for Missouri, Kansas & Texas Railway Company; and *John Barton Payne, W. F. Dickinson, Kenneth F. Burgess, N. S. Brown, and L. H. Strasser* for defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, *Commissioner*:

The complainants in this case are the Board of Railroad Commissioners of the State of Iowa and the Des Moines Saw Mill Company. The latter, hereinafter called the sawmill company, has its principal place of business at Des Moines, Iowa, and is there engaged in cutting dimension pieces from rough walnut logs for use in manufacturing gunstocks and furniture. By complaint filed May 31, 1917, it is alleged that the rates on rough walnut logs in carloads, from points in Missouri north of the Missouri River¹ to Des Moines were and are unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate

¹ On the lines of the Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Rock Island & Pacific; Missouri, Kansas & Texas; Quincy, Omaha & Kansas City; and the Wabash. The lines of all defendants except the Missouri, Kansas & Texas and the Quincy, Omaha & Kansas City, reach Des Moines, some of them more or less circuitously. The Quincy, Omaha & Kansas City is a part of the Chicago, Burlington & Quincy system.

commerce. By supplemental complaint, filed after the hearing, the issues were broadened to include the increased rates which became effective June 25, 1918, under General Order No. 28 of the Director General of Railroads, who was made a party defendant, but no further hearing was sought or had. We are asked to prescribe reasonable rates for the future and to award reparation on all shipments which moved on and subsequent to May 8, 1917. Rates will be stated in cents per 100 pounds.

Walnut logs are not subject to damage in transit, are seldom lost, do not require expedited movement, and can be loaded in coal or on flat cars. The wastage in cutting dimension pieces is approximately 50 per cent, of which about one-half is sold for fuel at a low price, and the remainder is practically a total loss. The sawmill company takes the logs as they come, irrespective of knots or blemishes, and receives mostly culls ranging from 10 to 20 inches in diameter, whereas prime walnut logs, which are scarce, measure 24 inches and over in diameter with no knots or blemishes. The value at points of origin of the logs ranged from \$3 to \$8 per ton. Complainants seek rates not higher than 66 $\frac{2}{3}$ per cent of the rates contemporaneously in effect on common lumber between the same points.

Prior to October, 1916, the rates under attack, except from points on the Missouri, Kansas & Texas, ranged from 7.6 to 13 cents. These were special commodity rates, in some instances the same as the lumber rates and in others less. The principal rate, here used as representative because it applied from 102 out of the 117 points of origin shown of record, was 9.5 cents. This blanket rate covered distances ranging from 96 to 338 miles, and was the same as the lumber rate to Des Moines contemporaneously in effect from Kansas City for an average distance of 256 miles, and from St. Louis for a distance of 340 miles. *Wheeler Lumber, Bridge & Supply Co. v. St. L., I. M. & S. Ry.*, 23 I. C. C., 514; and *Same v. C., R. I. & P. Ry. Co.*, 52 I. C. C., 370.

From points on the Missouri, Kansas & Texas the rates were based on the combination of locals to and from Moberly, Mo., the outbound rate Moberly to Des Moines being 9.5 cents and the inbound factors ranging from 3.5 to 5 cents.

In *Wheeler Lumber, Bridge & Supply Co., v. St. L., I. M. & S. Ry.*, *supra*, decided May 7, 1912, a rate of 11.5 cents, then applicable on lumber from Kansas City to Des Moines, was found unreasonable to the extent that it exceeded the rate contemporaneously in effect from St. Louis, which at that time was 9.5 cents. In October, 1916, after the expiration of our order in that case, the 11.5-cent lumber rate was restored. Simultaneously the 9.5-cent walnut-log rates from northern Missouri to Des Moines were increased to 11.5 cents,

with some unimportant exceptions. Corresponding increases were made to some extent also in the related log rates. The inbound log rates from points on the Missouri, Kansas & Texas to Moberly were not increased; nor was the St. Louis-Des Moines lumber rate of 9.5 cents disturbed.

Complainants introduced an exhibit covering 658 shipments to Des Moines from 128 different points of origin in northern Missouri, which moved prior to the increases of October, 1916, yielding average revenue¹ of 10.2 mills per ton-mile and 27.5 cents per car-mile, respectively; the maximum yield for the minimum haul of 96 miles being 19.7 mills and 52.2 cents and the minimum yield, for the maximum haul of 375 miles, 5.3 mills and 12.5 cents. The average haul was about 200 miles, and the average loading 53,717 pounds. Based upon these averages the increased rate of 11.5 cents yielded ton-mile and car-mile revenues, respectively, of 11.5 mills and 30.8 cents. As a result of the general increase of June 25, 1918, the 11.5-cent rate became 14.5 cents, which is representative of the present log rates, here under attack, from northern Missouri to Des Moines.

Using the rates in force prior to the increase in October, 1916, the complainants compared the average ton-mile yield of 10.2 mills with the average ton-mile earnings of all class 1 and 2 roads for the year ended June 30, 1914, which was 7.33 mills for an average haul² of 146.04 miles. The average car-mile yield of 27.5 cents was compared by complainants with the car-mile yield of the rates on several commodities between Springfield, Ill., and St. Paul, Minn., 487 miles, ranging from 8 cents per car-mile on asphalt, paving, and roofing cement, tarred paper, and stoves, to 16 cents on mixed paints. The rates in force prior to October, 1916, were higher than those contemporaneously maintained on walnut logs from points in Kansas to Kansas City, Mo., which ranged from 7 to 9 cents for distances from 94 to 208 miles; also, with one exception, higher than the rates on hardwood logs and bolts from Arkansas, Louisiana, and Oklahoma to Memphis, prescribed in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432, 438. The rates prescribed in that case, however, were for "logs, all kinds, except walnut, holly, and cherry." When tested by population, developed area, and production, the transportation conditions in Iowa appear to be more favorable than in the territory lying south of the Missouri River. A further showing by the complainants was that from stations Ottumwa to Moulton, Iowa, inclusive, to St. Louis, the rate on walnut logs for distances from 244 to 279 miles was 8.5 cents, the average yield

¹ Excludes the haul, earnings, and rate factors up to Moberly on 63 cars from 11 points of origin on the M., K. & T.

² The average haul shown of 146.04 miles is that of a typical railroad and is not representative of a completed haul over two or more lines.

being 6.5 mills per ton-mile. The extent of the log movement under these rates was not shown.

No evidence was offered in support of the allegation of unjust discrimination under section 2 of the act, and the only evidence of undue prejudice, within the meaning of section 3, was a comparison of rates to Des Moines from points in Missouri on the line of the Wabash with rates for equal distances from Iowa points on the Wabash to Chillicothe, Mo. At the latter point a sawmill uses walnut logs in the production of lumber, but does not cut dimension pieces such as are cut by the complainant sawmill company. The record shows that for like distances the rates to Chillicothe from a limited number of Iowa points were lower than those contemporaneously in effect from northern Missouri to Des Moines. The Iowa-Chillicothe rates are on a progressive-distance basis, while the Missouri-Des Moines rates are from an extensive blanket of origin. Moreover, it is testified in defendants' behalf that the Iowa-Chillicothe rates are forced by competition, at junction points and cross-country, with the more direct line to Des Moines of the Chicago, Burlington & Quincy Railroad.

The defendants introduced evidence showing that the Missouri-Des Moines rates via the Wabash Railway are lower than rates on walnut logs for like distances from Missouri points to Cairo, Ill.; about the same as rates on wheat and slightly higher than the rates on corn for like distances from Missouri points to St. Louis, Mo. Wheat and corn move in considerable volume from local points on defendants' lines while the movement of walnut logs is scattered and infrequent. It should be noted that the route of the Wabash from Kansas City to Des Moines is 321 miles as against the short-line mileage of the Chicago Great Western Railroad, 217.7 miles, and an average of 256 miles for all routes.

The defendants also show that the Missouri-Des Moines log rates here in issue are lower than the sixth-class rates applicable on walnut logs for like distances within central freight association territory, lower than the Iowa-Kansas City rates, and lower than rates for like distances from certain points in Illinois, Wisconsin, and Minnesota to Iowa. No showing was made of any movement under the higher rates.

The examiner, in a proposed report served under our Rules of Practice, recommended that the rates under attack be found unreasonable for the period prior to June 25, 1918, to the extent of their excess over the rates in force immediately prior to September 1, 1916; and for the period from and including June 25, 1918, to the extent of their excess over the rates in force immediately prior to September 1, 1916, plus the increases authorized by General Order 28 of the

Director General. His further recommendation was that reparation be awarded on all shipments made on and after May 8, 1917.

No exceptions were filed by the complainants. The defendants excepted to the examiner's recommendations, largely upon what they regard as a failure justly to weigh the evidence. They point particularly to (a) comparisons made by the complainants and by themselves; (b) the light volume of walnut-log traffic as compared with traffic in other commodities originating in the same territory; (c) the empty movement of open cars; (d) the storage at times of the logs before shipment, without charge, on the right of way of the railroads; and (e) the long haul over routes such as the Wabash and the Chicago, Burlington & Quincy, as well as from points on branch lines, under what to a large extent are blanket rates. They also strongly protest against the recommendation to award reparation. Oral argument was heard and we are thus brought to a consideration of the issues.

The representative log rate, as also the lumber rate from both Kansas City and St. Louis to Des Moines, was 9.5 cents immediately prior to September 1, 1916; hence, the recommendation was, in substance, that the old 9.5-cent rate be found reasonable for the period prior to June 25, 1918, and for the subsequent period as increased by the general order effective on that date.

Unless the Kansas City-Des Moines lumber rate of 11.5 cents, which became effective October 15, 1916, and the present lumber rate of 14.5 cents, were correspondingly reduced the examiner's recommendations, if given effect, would mean a retroactive application on walnut logs of rates lower than those contemporaneously in effect on lumber, notwithstanding our findings that walnut logs and lumber should take the same rates. *Hartzell v. C., B. & Q. R. R. Co.*, 49 I. C. C., 357; *Hartzell v. C., C. & St. L. Ry. Co.*, *ibid*, 691. And, as presently will be shown, we have never found that 9.5 cents was a reasonable maximum rate to apply on lumber from Kansas City to Des Moines.

In the first *Wheeler Case*, *supra*, decided May 7, 1912, we found the then existing rate of 11.5 cents on lumber from Kansas City to Des Moines unreasonable to the extent that it exceeded the rate contemporaneously in effect from St. Louis to Des Moines. At that time the St. Louis-Des Moines rate was 9.5 cents and the carrier elected to comply with our order by reducing the Kansas City-Des Moines rate to that basis. In October, 1916, after expiration of our order in that case, the 11.5-cent lumber rate from Kansas City to Des Moines was restored. At about the same time the carriers attempted to increase the rate from St. Louis to Des Moines to 11.5 cents, as an incident to numerous other increases. The proposed increases,

with certain exceptions, were found not justified in *Lumber to Iowa Points*, 44 I. C. C., 401. This had the effect of continuing the 9.5-cent rate in force from St. Louis to Des Moines. As we said in the second *Wheeler Case*, *supra*, the defendants' evidence in this case was directed more particularly to the justification of other proposed rates and was insufficient to justify the proposed St. Louis-Des Moines rates.

The 11.5-cent rate established in October, 1916, from Kansas City to Des Moines was attacked by formal complaint in the second *Wheeler Case*, *supra*, decided March 7, 1919. We then held, as we had formerly held, that the rate on lumber from Kansas City to Des Moines was and for the future would be unreasonable and unduly prejudicial to the extent that it exceeded the lumber rate contemporaneously maintained from St. Louis to Des Moines. This finding was based entirely on relationship, and in complying with our order the Director General increased the St. Louis rate to 14.5 cents, the rate now applicable from Kansas City.

It will thus be seen that at no time have we condemned the 11.5-cent rate as unreasonable *per se* or found that 9.5 cents would be a reasonable maximum rate from Kansas City to Des Moines.

Upon consideration of the record we do not find that the rates assailed were, are, or for the future will be, unreasonable, unjustly discriminatory, or unduly prejudicial. An order will be entered dismissing the complaint.

No. 6885.¹

MUSKOGEE WHOLESALE GROCER COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted July 3, 1919. Decided February 12, 1920.

1. Reparation awarded on a carload of toilet paper from Green Bay, Wis., to Muskogee, Okla., and on carload shipments of wrapping paper from points in Michigan and Wisconsin to destinations in Oklahoma.
2. On further hearings in *Phoenix Printing Co. v. M., K. & T. Ry. Co.*, 31 I. C. C., 289, and in *Adleta Paper Co. v. C. & N. W. Ry. Co.*, *ibid.*, 347, complainants directed to file statements under rule V in order that reparation previously awarded may be determined.

Nuel D. Belnap, John S. Burchmore, and Luther M. Walter for complainants.

J. H. Tedrow and J. E. Burks for Chamber of Commerce of Kansas City, Mo., intervener.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

By DIVISION 3:

By complaint filed May 4, 1914, complainants in No. 6885 seek reparation, alleging that the rates charged on a carload of toilet paper from Green Bay, Wis., to Muskogee, Okla., and on 13 carload shipments of wrapping paper from six Wisconsin points and Menominee, Mich., to Muskogee, Tulsa, and McAlester, Okla., on and after May 1, 1912, were unreasonable, and that the adjustment comprising those rates and the corresponding rates to Kansas City and Joplin, Mo., was unduly prejudicial to complainants at Muskogee and unduly preferential of their competitors at the two Missouri points mentioned. The Director General of Railroads has not been made a party, and the present rates are not assailed. There were certain interventions, but no reparation was sought by the interveners. Rates will be stated in cents per 100 pounds and are those in effect when the shipments moved.

¹ This report also embraces further hearings in No. 6543, *Phoenix Printing Company et al. v. Missouri, Kansas & Texas Railway Company et al.*; and in No. 6544, *Adleta Paper Company v. Chicago & North Western Railway Company et al.*

The shipments consisted of 1 carload of toilet paper from Green Bay, Wis., to Muskogee, charged at a rate of 53 cents, and 13 carloads of wrapping paper moving—3 from Nekoosa, Wis., and 1 from Brokaw, Wis., to Muskogee at 51 cents; 5 for Neenah, Wis., and 1 each from Appleton and Menasha, Wis., to McAlester at 52 cents; and 1 each from Shawano, Wis., and Menominee, Mich., to Tulsa at 52 cents.

All of these points of origin take the Chicago group rates on paper. McAlester is 62 miles south of Muskogee, 95 miles north of Denison, Tex., and between Fort Smith, Ark., on the east and Oklahoma City, Okla., on the west. Toilet paper is shipped in boxes, about 24,000 pounds in a car; and wrapping paper in bundles, 36,000 pounds or more in a car. Both are rated fifth class in the western classification.

In *Adleta Paper Co. v. C. & N. W. Ry. Co.*, 31 I. C. C., 347, we prescribed rates on wrapping paper to Muskogee of 34 cents from Nekoosa and certain other Wisconsin points, and 35 cents from Michigan points. Our findings in that case will apply to the shipments here before us of wrapping paper from Nekoosa and Brokaw to Muskogee. Tulsa is but 3 miles farther distant than Muskogee from the Wisconsin and Michigan points of origin by the direct route, and shipments from Shawano and Menominee to Tulsa should therefore take the same rates as to Muskogee. The only rates which remain to be considered in the instant case are those charged for the shipments of wrapping paper from Neenah, Appleton, and Menasha to McAlester, and that of toilet paper from Green Bay to Muskogee.

The complainants contend that the 34-cent rate, which was prescribed by us for wrapping paper from Wisconsin points to Muskogee in the *Adleta Paper Co. Case*, *supra*, would be reasonable for each of the shipments herein considered, in view of the fact that McAlester and Tulsa are frequently grouped with Muskogee on shipments from Chicago territory, and that toilet paper takes the same rate as wrapping paper from these points of origin to Joplin and Kansas City, being 31 cents to the former for distances ranging from 814 to 1,032 miles, and 20 cents to the latter for distances ranging from 624 to 695 miles.

For defendants it was testified that the Kansas City rate was based on a rate of 15 cents, applying between the Mississippi and Missouri rivers for the short-line distance of 200 miles from Hannibal, Mo., to Kansas City. The rate to the latter point from Chicago was 5 cents higher than the rate from the Mississippi River and applied from the points of origin herein considered. The rate to Kansas City was observed as a maximum to Springfield, Mo., an intermediate point on the St. Louis-San Francisco Railroad, 239

miles from St. Louis, and only 93 miles from Joplin. This, defendants contend, unduly depressed the rate to Joplin. In *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 505, we said that the difference in transportation conditions tends to produce lower rates east of the Missouri River than west thereof. We refused to base rates on news print paper to Wichita, Kans., on ton-mile earnings to Kansas City, and prescribed a rate of 37 cents from Minnesota points for an average short-line distance of 866 miles.

Defendants cited rates on wrapping paper from Shawano, Wis., of 51 cents to Fort Smith, 1,023 miles; 55 cents to Oklahoma City, 1,024 miles; and 69 cents to Denison, 1,173 miles. It appears that complainants compete with Fort Smith and also with several Oklahoma points. Defendants also referred to fifth-class rates from Chicago of 53 cents to Muskogee, 57 cents to Tulsa, and 58 cents to McAlester, and stated that McAlester generally and Tulsa frequently took higher rates than Muskogee. They contend that the fifth-class rate of 53 cents on the shipment of toilet paper from Green Bay to Muskogee was reasonable, citing rates from the same point on that commodity of 58.5 cents to Fort Smith, 62 cents to Oklahoma City, 84 cents to Denison, and 48 cents to Wichita. They do not deny that equal rates on toilet paper and wrapping paper were applied to Joplin and Kansas City, although, as previously pointed out, wrapping paper loads more heavily, is less valuable, and moves in greater volume than toilet paper.

We find that the rates charged on the shipments of wrapping paper and toilet paper from Wisconsin points to Muskogee and Tulsa were unreasonable to the extent that they exceeded 34 cents per 100 pounds; that the rate charged on the shipment of wrapping paper from Menominee to Tulsa was unreasonable to the extent that it exceeded 35 cents per 100 pounds; and that the rate charged on the shipments of wrapping paper from Wisconsin points to McAlester was unreasonable to the extent that it exceeded 37 cents per 100 pounds.

Of the 13 shipments of wrapping paper 10 were consigned to complainant Hale-Halsell Grocery Company, which purchased 2 of these shipments f. o. b. points of origin. One of these, weighing 26,790 pounds, moved from Neenah to McAlester, and the other, weighing 36,400 pounds, from Menominee to Tulsa. That complainant purchased its other 8 shipments from complainant Samuel Cupples Woodenware Company, f. o. b. destination, the freight rate being considered in fixing the gross invoice price, so that the net price, after allowing for freight charges, corresponded with the price f. o. b. mill at the time of sale. It was contended that the consignee bore the freight charges on such shipments. We have consistently held that where freight charges are paid by consignees, but are

charged back to the consignors, the consignees are not entitled to reparation. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 40 I. C. C., 738, 740. We find that complainant Hale-Halsell Grocery Company paid and bore the charges on the 2 shipments first described, and that complainant Samuel Cupples Woodenware Company paid and bore the charges on the 8 shipments last referred to, at the rates herein found unreasonable; that they were respectively damaged thereby to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The amounts of reparation due can not be determined on this record, and the last-named complainants should prepare and submit to defendants, for verification, statements showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. Complainants were given 20 days within which to file proof that they paid and bore the charges on other shipments covered by the complaint, but they failed to do so; and as to shipments other than the 10 above indicated the record affords no basis for an award of reparation.

It becomes unnecessary to consider the question of undue prejudice, or to make an order for the future.

In connection with the hearing in this case further hearings were had in *Adleta Paper Co. v. C. & N. W. Ry. Co.*, *supra*, and in *Phoenix Printing Co. v. M., K. & T. Ry. Co.*, 31 I. C. C., 289, which dealt with rates on news print paper to Muskogee from Wisconsin and Minnesota mills. In both cases we found that the complainants were entitled to reparation. These cases were later reopened on petitions of defendants, but our orders were continued in effect, and no further action was taken toward a reconsideration of the merits. The rates prescribed were established on October 1, 1914, and maintained for more than two years. Reparation has not yet been paid. To enable complainants to prove their claims the cases were set for further hearing. Statements covering the shipments were submitted, but defendants desire opportunity to check them, and the dates on which the charges were paid are not shown. On the present records the amounts of reparation due can not be determined. Complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, and submit them to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of orders in those cases, awarding reparation.

No. 10183.

ATLANTIC LUMBER COMPANY

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.

Submitted November 25, 1919. Decided February 17, 1920.

Following *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183, demurrage charges on cars held at Cape Charles, Va., a reconsigning point, because of embargoes at points to which diversion was ordered, found to have been illegal, the tariffs making no provision therefor. Reparation awarded.

Robert D. Burbank for complainant.

Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report in this case was served upon the parties. Exceptions were filed by the defendants.

By complaint filed May 8, 1918, complainant, a corporation engaged in the lumber business at Boston, Mass., asks reparation for alleged unlawful charges for demurrage assessed at Cape Charles, Va., on 11 carloads of lumber shipped in December, 1915, and March, 1916, from points in Virginia, North Carolina, and South Carolina to Cape Charles and reconsigned from that point to destinations in Massachusetts, Connecticut, and Rhode Island. Claims were presented to the Commission informally within the statutory period.

It appears from the statement of facts stipulated by the parties and filed in lieu of formal hearing that prior to or after the arrival of the cars at Cape Charles complainant furnished the proper agent of defendant New York, Philadelphia & Norfolk Railroad Company at Port Norfolk, Va., orders to reconsign them to points beyond. In three instances the orders were not received by the carrier within the free-time period, or 24 hours after notice of arrival had been sent, but no claim is made for the demurrage that accrued in consequence of this delay. The tariff then in effect provided through rates from the points of origin of the shipments to the points of destination to which they were reconsigned and permitted reconsignment at Cape

Charles. There was no tariff provision against reconsignment to embargoed points.

At the time these cars left the points of origin, and when they arrived at Cape Charles, embargoes were in effect against shipments to the destinations given by complainant. The final destinations of 8 of the 11 cars were known to complainant at the time of their shipment, but they were billed to Cape Charles for the purpose of concealing the true destinations from the vendors. Because of the embargoes the cars were held at Cape Charles under demurrage. For the period during which the cars were so detained charges aggregating \$199 were assessed exclusive of the charges which accrued prior to the time reconsignment orders were given.

This case is controlled by *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183. It was held therein that the assessment of demurrage charges on cars held at a reconsignment point because of embargoes at the points to which diversion is ordered is illegal unless the tariffs provide that the carrier will not reconsign to an embargoed point.

Upon the record and following the case cited we find that the charges assailed were illegal; that complainant made the shipments described and paid and bore the charges thereon; that it has been damaged, and that it is entitled to reparation from the New York, Philadelphia & Norfolk Railroad Company in the sum of \$199, with interest.

An appropriate order will be entered.

57 I. C. C.

No. 10566.

BUICK MOTOR COMPANY

v.

DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY
OF NEW JERSEY, ET AL.

Submitted August 25, 1919. Decided February 16, 1920.

Third-class rating and rates on electric storage batteries, in carloads, from Philadelphia, Pa., to Detroit and Flint, Mich., not found unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

George C. Conn and *Albert Nelson* for complainant.

W. J. Dibble for Hudson Motor Car Company, intervener.

William K. Williams and *Harold A. Sleeper* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant, a division of the General Motors Company, is a corporation manufacturing automobiles at Flint, Mich. By complaint filed March 19, 1919, as amended, it alleges that the third-class rating and rates, governed by the official classification, applied by defendants on electric storage batteries and parts thereof, in carloads, from Philadelphia, Pa., to Flint are unreasonable, unjustly discriminatory, and unduly prejudicial. The establishment of a reasonable rate and rating for the future and reparation on 170 carloads shipped between May 21, 1917, and August 30, 1918, are asked. The Hudson Motor Car Company, a corporation manufacturing automobiles at Detroit, Mich., intervened on behalf of complainant and asked reparation on 50 carloads of electric storage batteries shipped between August 3, 1917, and May 22, 1919, from Philadelphia to Detroit. The evidence at the hearing was directed principally to the propriety of the ratings rather than to the measure of the individual rates.

The shipments to Flint moved via the Philadelphia & Reading Railway and New York Central Railroad to Suspension Bridge, N. Y., and the Pere Marquette Railway beyond, or via the Pennsylvania Railroad to Toledo, Ohio, and the Pere Marquette beyond. The shipments to Detroit originated on the Philadelphia & Reading and were delivered by the Wabash Railroad, Michigan Central Railroad, or Grand Trunk Railway. Charges were collected on all of the

shipments at the applicable joint third-class rates governed by the official classification.

By exceptions to the classification fourth-class rates contemporaneously applied on storage batteries, in mixed carloads with electrical appliances, from Philadelphia to Flint and Detroit over the routes of movement, and from points in central freight association territory to points in trunk line territory, including Philadelphia, except that defendant Grand Trunk made the fourth-class rates applicable on straight as well as on mixed carloads, and defendant Baltimore & Ohio confined their application to straight carloads. By exception, also, defendants maintained fourth-class rates on electric storage batteries in straight carloads, and in mixed carloads with electrical appliances, between points in central freight association territory.

Complainant and intervener contend that it was and is unreasonable and unjustly discriminatory for defendants to maintain third-class rates on electric storage batteries in straight carloads, while contemporaneously maintaining fourth-class rates on batteries in mixed carloads with electrical appliances, many of which were rated higher than third class in straight carloads. Others are rated lower than fourth class.

Upon the facts of record and following *Hudson Motor Car Co. v. P. R. R. Co.*, 38 I. C. C., 571, and *Hudson Motor Car Co. v. G. T. Ry. Co. of Canada*, 42 I. C. C., 341, we find that the third-class rating and rates assailed were not and are not unreasonable, and are not shown to have been or to be unjustly discriminatory or unduly prejudicial.

The complaint will be dismissed.

.57 I. C. C.

No. 10618.¹
AKIN GASOLINE COMPANY
v.
DIRECTOR GENERAL, MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY, ET AL.

Submitted July 8, 1919. Decided February 16, 1920.

Rates on liquefied petroleum gas in tank-car loads from Dewey, Glenpool, and other points in Oklahoma to North Baton Rouge, La., found to have been unreasonable. Reparation awarded.

H. C. Witt for complainant.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the oil business at Tulsa, Okla. By complaints filed April 28 and May 24, 1919, as amended, it is alleged that the rates charged on various shipments of liquefied petroleum gas in tank-car loads from Dewey, Glenpool, Watkins, Covington, Bartlett, and Bixby, Okla., to North Baton Rouge, La., in January, February, and March, 1918, were unjust and unreasonable to the extent that they exceeded a rate of 33 cents per 100 pounds contemporaneously in effect on various other petroleum products from and to the same points. The establishment of the 33-cent rate for the future and reparation are sought. Rates will be stated in cents per 100 pounds.

It appears that the shipments consisted of liquefied petroleum gas described in the western classification, which was in effect when the shipments moved, and in the present consolidated classification, as having a vapor tension at 100° Fahrenheit that does not exceed 25 pounds per square inch. Both classifications provide fifth-class rating on this commodity and on certain other petroleum products, including gasoline. Liquefied petroleum gas must be shipped in

¹ This report also embraces No. 10618 (Sub-No. 1), Same v. Midland Valley Railroad Company et al; No. 10618 (Sub-No. 2), Same v. Missouri, Kansas & Texas Railway Company et al; No. 10618 (Sub-No. 3), Same v. Midland Valley Railroad Company et al; No. 10618 (Sub-No. 4), Same v. St. Louis-San Francisco Railway Company et al; No. 10618 (Sub-No. 5), Same v. Missouri, Oklahoma & Gulf Railway Company et al; and No. 10618 (Sub-No. 6), Same v. Midland Valley Railroad Company et al.

pecially built tank cars or drums. The shipments were made in such cars, furnished by the complainant, and moved over defendants' lines, four from Dewey, one each from Glenpool, Watkins, and Bartlett, two from Covington, and five from Bixby. Charges were collected at the following rates: 50 cents from Dewey; 59 cents from Glenpool and Watkins; 90 cents from Covington; 85 cents from Bartlett; and 77 cents from Bixby. From a check of the tariffs it would appear that certain undercharges or overcharges may exist, dependent upon the routing of the shipments.

The average distance from all points of origin to North Baton Rouge over the routes of movement is about 600 miles. When the shipments moved a commodity rate of 33 cents applied on gasoline and many other petroleum products from and to these points, and that rate was subsequently established on liquefied petroleum gas, except from Covington. On June 25, 1918, the 33-cent rate was increased to 41.5 cents, under General Order No. 28 of the Director General of Railroads, and reduced to 37.5 cents on July 29, 1918, pursuant to Director General's Freight Rate Authority No. 96. The latter rate was made applicable from Covington on December 31, 1918. The 37.5-cent rate from and to all of these points is still in effect and is satisfactory to complainant. The request for the establishment and maintenance of the 33-cent rate for the future was waived at the hearing. Complainant shows that when the shipments moved the commodity rate on liquefied petroleum gas over several specified routes from Arkansas City, Augusta, Wichita, and Winfield, Kans., to North Baton Rouge, average distance 735 miles, was 35 cents, earning 9.52 mills per ton-mile.

Defendants introduced no evidence and admitted that the rates charged were unreasonable to the extent that they exceeded the present rates from and to the same points on petroleum products, including liquefied petroleum gas. While it was not admitted that the 33-cent rate would have been reasonable, it was explained that this rate was not made applicable to the shipments at the time of movement because of an error in the publication of the tariff, and that as 33 cents contemporaneously applied on other refined petroleum products this rate should also have been made applicable on liquefied petroleum gas.

We find that the rates legally applicable were unreasonable to the extent that they exceeded the rates contemporaneously in effect on gasoline, in tank-car loads; that complainant made the shipments as described and paid and bore the charges thereon in excess of those which would have accrued at the rates herein found reasonable; that it has been damaged accordingly; and that it is entitled to reparation, with interest. The complainant should prepare a statement

showing the details of the shipments in accordance with rule V of the Rules of Practice, including any undercharges or overcharges which may exist, and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

War taxes in excess of those which would have accrued on the basis of the rates found reasonable were collected on the shipments. We are without power to order refund of excess war taxes.

57 L. C. C.

No. 10617.
AKIN GASOLINE COMPANY
v.
DIRECTOR GENERAL, FORT WORTH & DENVER CITY
RAILWAY COMPANY, ET AL.

Submitted September 3, 1919. Decided February 16, 1920.

Rates on liquefied petroleum gas in tank-car loads from Electra, Tex., to North Baton Rouge, La., found to have been unreasonable to the extent that they exceeded those contemporaneously applicable from Wichita Falls, Tex., to the same destination. Reparation awarded.

H. C. Witt for complainant.

Alfred McKnight, R. V. Fletcher, and Wharton & Hiner for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the oil business at Tulsa, Okla. By complaint filed April 26, 1919, as amended at the hearing, it contends that the rates charged by defendants on six tank-car loads of liquefied petroleum gas, shipped in July and August, 1918, from Electra, Tex., to North Baton Rouge, La., were unjust and unreasonable. It seeks reparation upon the basis of the rates contemporaneously in effect from Wichita Falls, Tex., to North Baton Rouge. Rates will be stated in cents per 100 pounds.

Liquefied petroleum gas is more fully described in our report in *Akin Gasoline Co. v. Director General*, 57 I. C. C., 133, decided contemporaneously herewith.

When the shipments moved, in July and August, 1918, the rates from Wichita Falls were 41.5 cents and 37.5 cents, respectively. The present rate from both Electra and Wichita Falls to North Baton Rouge is 34.5 cents.

The shipments moved, as routed by complainant, Fort Worth & Denver City Railway to Wichita Falls, Missouri, Kansas & Texas Railway of Texas to Shreveport, La., and Louisiana Railway & Navigation Company beyond. On two of the July shipments, weighing 106,557 pounds, aggregate charges of \$692.62 were collected at a rate of 65 cents; on the other July shipment, weighing 53,242

pounds, charges of \$407.30 were collected at a rate of 76.5 cents. The remaining three shipments made in August, 1918, aggregated 159,799 pounds and charges were collected thereon in the sum of \$1,046.69, at a rate of 65.5 cents. These charges are exclusive of the war tax. The rate legally applicable on the July shipments was a combination of 60.5 cents, based on the fifth-class distance rate of 19 cents to Wichita Falls, 26.3 miles, governed by the western classification, and a commodity rate of 41.5 cents beyond, while that legally applicable on the August shipments was a combination of 52.5 cents based on the fifth-class distance rate of 15 cents to Wichita Falls and a commodity rate of 37.5 cents beyond. The shipments were overcharged \$340.89. Contemporaneously in effect were rates of 52.5 cents in July and 46.5 cents in August applicable via Beaumont, Tex.

Complainant directs attention to the facts that the average distance over several specified routes to North Baton Rouge from representative Kansas points, namely, Arkansas City, Augusta, Wichita, and Winfield, is 735 miles, and that the rate of 39.5 cents applicable from those points yields 10.75 mills per ton-mile, whereas the rates to the basis of which reparation is asked would average 13.59 mills for the 581-mile distance over the route of movement. The rates legally applicable yield an average of 19.45 mills per ton-mile.

Complainant also shows that the joint through fifth-class rate from Electra to North Baton Rouge, not applicable on the traffic under consideration, was 86.5 cents, while the fifth-class rate from a number of representative Oklahoma points was 87.5 cents; that the commodity rate of 37.5 cents from these Oklahoma points was 42.86 per cent of the corresponding fifth-class rate and if the same ratio were applied to the class rate from Electra, the commodity rate from that point would have been 37.07 cents; and that a similar comparison with the fifth-class rates and the commodity rates from Kansas points to North Baton Rouge would result in a corresponding commodity rate from Electra, not exceeding 37.13 cents.

Substantially the only defense offered is that complainant could have availed itself of somewhat lower rates by routing the shipments through Beaumont, and that as the carriers voluntarily reduced the rates charged on the shipments no reparation should be awarded.

We find that the charges collected on the July and August shipments were illegal to the extent that they exceeded charges based on rates of 60.5 cents and 52.5 cents, respectively, and that they were unreasonable to the extent that they exceeded charges that would have accrued upon the basis of the rates contemporaneously maintained by defendants on like traffic from Wichita Falls to North

Baton Rouge; that complainant made the shipments as described and paid and bore the charges thereon in excess of those which would have accrued at the rates herein found reasonable; that it has been damaged accordingly; and that it is entitled to reparation in the sum of \$884.19, with interest, which includes the amount of the overcharges.

An order will be entered awarding reparation, but not including excess war taxes. No order for the future is necessary.

57 I. C. C.

No. 10638.

LOWRY LUMBER COMPANY

v.

DIRECTOR GENERAL, CHICAGO, INDIANAPOLIS &
LOUISVILLE RAILWAY COMPANY, ET AL.

Submitted November 13, 1919. Decided February 17, 1920.

Demurrage charges which legally accrued at Little Rock, Ark., on a shipment of lumber from Wesson, Ark., to Little Rock, reconsigned to Bloomington, Ind., found not to have been unreasonable. Complaint dismissed.

G. H. Lowry and John N. Swenson for complainant.

A. P. Humburg, C. W. Crawford, and M. W. Rotchford for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By Division 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions were filed.

The complainant, a corporation engaged in the lumber business with its main office at Kansas City, Mo., is successor in interest to the Beekman Lumber Company, the shipper herein. It alleges that \$52 demurrage charges collected at Little Rock, Ark., on a carload of lumber shipped on January 8, 1918, from Wesson, Ark., to Little Rock and reconsigned to Bloomington, Ind., were unreasonable. Complainant asks reparation in that sum.

The lumber was consigned by the shipper to itself at Little Rock, where it arrived on January 24, 1918, over the Missouri Pacific Railroad, hereinafter called defendant. Notice of arrival was mailed by defendant addressed to the shipper at that point, but apparently was not received. On February 1 the shipper was notified at its main office in Kansas City of the arrival of the car at Little Rock, and sent reconsignment instructions the same day by letter to the defendant at Kansas City. The shipment was released on Monday, February 4, date upon which these instructions reached defendant's Little Rock office. Demurrage charges of \$52 were paid by the shipper. The charges legally applicable were \$2 per day for the first five days and \$5 per day for each succeeding day. Defendant states that the charges should have been assessed upon this basis

for seven days' detention and admits an overcharge of \$32. This should be promptly refunded, with interest.

Complainant maintains that the shipper had instructed defendant, at a time not specified of record but several years prior to the movement of the shipment, to send to the shipper's Kansas City office all notices of arrival of shipments at Little Rock consigned to it at that point, and that if such instructions had been complied with in the first instance no demurrage charges would have accrued. It is not clear that such instructions to defendant should be considered in connection with the shipment at issue. The mailing of notice by defendant to the consignee at the address indicated on the bill of lading was in full compliance with its tariffs. Complainant also contends that, if it was not incumbent upon the defendant to notify the shipper at Kansas City upon arrival of the shipment at Little Rock, we should find that demurrage charges accrued only for six days, or up to and including February 1, as the shipper's instructions transmitted to defendant on that day were received by defendant in time for a telegram from its Kansas City office to reach its office at Little Rock on February 2, thus releasing the shipment on that day. Complainant also urges that reasonable charges for detention should not have exceeded \$1 per day. The testimony does not show when the reconsignment instructions of February 1 were received at defendant's Kansas City office. Complainant furnished no evidence in support of its contention that defendant's established demurrage charges were unreasonable.

Defendant points out that the applicable tariff provides that shipments shall be released as of 7 a. m. of the day on which reconsignment instructions are received at the station where shipments are held, and that the receipt of instructions by defendant at Kansas City on February 2 did not release the shipment at Little Rock on that day. Defendant asserts that the instructions were sent by it to Little Rock within a reasonable time, February 2 falling on Saturday, a half holiday, and that demurrage charges were properly assessable for that day.

Upon the record we find that seven days' demurrage accrued on this shipment and that the legally applicable demurrage charges were not unreasonable.

An order dismissing the complaint will be entered.

No. 10665.
COHEN-SCHWARTZ RAIL & STEEL COMPANY
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted November 14, 1919. Decided February 17, 1920.

Rate on rails and angle bars in straight and mixed carloads from Steele, Mo., to Madison and East St. Louis, Ill., found unreasonable. Reparation awarded.

Philip G. Safford for complainant.

A. P. Stewart for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

The complainant, a corporation, by its complaint filed May 23, 1919, alleges that the fifth-class rate of 32 cents per 100 pounds charged and applicable under the tariffs on 15 carloads of rails and angle bars shipped during July and August, 1917, from Steele, Mo., to Madison and East St. Louis, Ill., was unreasonable, in violation of section 1 of the act to regulate commerce. Reparation only is prayed.

Steele is on the St. Louis-San Francisco Railway, 228 miles from East St. Louis. The shipments moved over the line of that carrier to St. Louis and thence over the line of the Terminal Railroad Association of St. Louis to destinations, Madison being within the switching limits of East St. Louis. There was contemporaneously in effect in the reverse direction a commodity rate of \$3 per long ton on rails and of \$3 per net ton on angle bars, and about 30 days after the shipments moved this rate was made effective from Steele to East St. Louis and Madison. On June 25, 1918, the \$3 rate was increased to \$3.80 under General Order No. 28 of the Director General of Railroads. The latter rate is still in effect and is not assailed.

The shipments covered by the complaint averaged about 47 tons per car. Under the 32-cent rate charged and collected the ton-mile earnings were 28.5 mills and the car-mile earnings \$1.32. The \$3 rate on angle bars yielded ton-mile earnings of 13 mills and car-mile earnings of 62 cents. Defendants express willingness to make reparation on the basis of the \$3 rate but are unwilling to pay interest on the ground that complainant did not comply with their repeated requests to furnish the data on which they could apply to us for authority to make reparation. It appears that there had been a controversy between complainant and defendant St. Louis-San Francisco Railway regarding undercharges, in consequence of which the charges in issue were not paid in full until April 12, 1919.

We find that the rate charged was unreasonable to the extent that it exceeded a rate of \$3 per long ton on the rails and \$3 per net ton on the angle bars; that complainant made the shipments as described, paid and bore the freight charges, and has been damaged thereby and that it is entitled to reparation, with interest, in the amount represented by the difference between the charges paid and those which would have accrued at the rate herein found reasonable. The exact amount of reparation due can not be determined upon this record, and complainant should prepare and submit to defendant carriers for verification a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an appropriate order.

By the Commission, Division 3.

57 I. C. C.

PYRENE MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, NEW YORK CENTRAL RAILROAD
COMPANY, ET AL.

Submitted December 26, 1919. Decided February 17, 1920.

Rate on chemical fire extinguishers, hand, other than wheeled, from New York, N. Y., to Seattle, Wash., and Los Angeles, Calif., found not to have been unreasonable. Complaint dismissed.

C. J. Fagg and W. W. Pierce for complainant.

H. C. Bush and Robert W. Fyfe for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions were filed.

By complaint filed July 1, 1919, the complainant, a corporation manufacturing hand chemical fire extinguishers at New York, N. Y., alleges that the rate of \$3.70 per 100 pounds charged for the transportation of two car lots of chemical fire extinguishers, hand, other than wheeled and other than glass, with various other articles used in connection with said extinguishers, from New York to Seattle, Wash., and Los Angeles, Calif., on April 4 and 16, 1917, was unjust and unreasonable to the extent that it exceeded the third-class rate of \$2.65 per 100 pounds contemporaneously applicable from and to the same points on hand fire engines, other than chemical, and asks for reparation. Informal complaints were filed within the statutory period.

The shipments moved as stated over the lines of defendants. Charges were collected at the first-class, any-quantity rate of \$3.70 per 100 pounds, legally applicable. The commodity shipped is a small hand pump made of brass about 14 inches long and 3 inches in diameter, designed to hold 1 quart of a chemical compound for extinguishing fire. When so filled it weighs about 6 pounds, is packed in boxes, and loads compactly. Information as to weights and values per cubic foot, submitted by complainant, is conflicting.

Its witness stated that the catalogue, introduced as an exhibit,

The fire engine, other than the carload rating applied, pounds, bears no analogy to small hand pumps. It is mounted a large hand pump with folding handles and other commodities were described in the history of fire-fighting apparatus.

The record shows that the Western Classification upon its commodity classification complainant applied for a carload rating was likewise denied. The Commission proposed to establish an application. Subsequent showed a carload rating third class, subject to the carriers established and applicable to the

On this record The complaint

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No. 10736.

LOWRY LUMBER COMPANY

v.

DIRECTOR GENERAL, ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ET AL.

Submitted January 9, 1920. Decided February 17, 1920.

Demurrage charges at Jonesboro, Ark., on a carload of lumber from Ogemaw, Ark., found not to have been unreasonable. Complaint dismissed.

G. H. Lowry for complainant.

A. P. Humburg and *James M. Chaney* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

A proposed report was prepared by the examiner who heard the case. No exceptions were filed.

The complainant assails as unreasonable the demurrage charges collected at Jonesboro, Ark., on a carload of lumber shipped March 19, 1919, from Ogemaw, Ark., to Jonesboro, and subsequently re-consigned to Coffeyville, Kans. Reparation is sought and the establishment of reasonable demurrage charges for the future.

Complainant purchased the lumber from the Creason-Grayson Lumber Company, to which it was originally billed at Jonesboro. The car arrived at Jonesboro on March 21, 1919, over the St. Louis Southwestern Railway, hereinafter called the Cotton Belt. The original consignee was duly notified of arrival, but failed promptly to notify complainant in turn, and the car remained at Jonesboro awaiting disposition orders until April 2, 1919, when, in compliance with complainant's instructions, the car was reconsigned to Coffeyville. Demurrage charges in the sum of \$30 were collected by the Cotton Belt for seven days' detention of the car at Jonesboro, exclusive of free time and legal holidays, in accordance with its demurrage tariff, which provided for the assessment of \$3 for each of the first four days and \$6 for each of the succeeding three days. Complainant does not question the legality of the demurrage charges or the period for which assessed, but contends that they were unreasonable to the extent they exceeded those that would have accrued at \$1 per day. It insists that the charges assailed are out of proportion to the value of the equipment used and

service rendered, and would confiscate the value of a carload of lumber in from 30 to 60 days, according to its grade.

In defense of the charges assailed defendants show the history of demurrage charges from their inception to the present time. In substance the showing is that there were no uniform demurrage rules prior to 1910, when a uniform charge of \$1 per car for each day of detention beyond the free time was established, increased in 1916 to \$2; that, due to the heavy demands upon all transportation facilities during the period preceding and immediately subsequent to the entry of the United States into the war which made the prompt release of equipment imperative, charges for detention after the first five days were increased to \$5 per day, effective May 1, 1917; that these charges were the result of an agreement between shippers and carriers and had our tentative approval, and were the charges in effect when the railroads passed under federal control; that in the fall of 1917 and early part of 1918 the carriers experienced the greatest car shortage the country has ever known, there being a demand for every available car; that various attempts were made to have shippers release equipment promptly, and on January 5, 1918, the Director General of Railroads issued his Order No. 3, which provided for a demurrage charge of \$3 per car for the first day, \$4 for the second day, and for each succeeding day an increase of \$1 over that for the preceding day, until it reached a maximum of \$10 per car per day; that many complaints were made as to this order, which resulted in a conference between representative shippers and the Railroad Administration, following which the Director General issued his Order No. 7, effective February 10, 1918, providing, among other things, for the assessment of demurrage charges, exclusive of free time, at the rate of \$3 per car for each of the first four days of detention, \$6 for each of the next three days, and \$10 for each succeeding day, and that this was the basis for computing the charges assessed by the Cotton Belt on the shipment in question at Jonesboro. It was further stated on behalf of defendants that their experience has shown that fewer cars are now held beyond the free time than formerly when demurrage charges were comparatively lower.

Under General Order No. 7-A of the Director General, dated October 25, 1919, charges are assessed at the rate of \$2 per day for the first four days after expiration of 48 hours' free time and \$5 for each succeeding day. These charges became effective on December 1, 1919, subsequent to the hearing in this case. They are not in issue, and we make no finding as to their lawfulness.

Upon this record we find that the demurrage charges assailed were not unreasonable.

An order dismissing the complaint will be entered.

No. 10747.
NEW JERSEY POWER & LIGHT COMPANY
v.
DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY
OF NEW JERSEY, ET AL.

Submitted January 6, 1920. Decided February 17, 1920.

Rate of \$3.20 per long ton on barley coal, in carloads, from Scranton, Pa., to Dover, N. J., found unreasonable to the extent that it exceeded the rate of \$2.40 per long ton subsequently established. Reparation awarded.

King & Vogt by *Elmer King* for complainant.

H. B. Thomas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions were filed.

Complainant is a corporation engaged in the generation of electric current for light, heat, and power purposes, at Dover, N. J. By complaint filed February 13, 1919, it alleges that the rate charged for the transportation of certain carloads of barley coal shipped from Scranton, Pa., to Dover, N. J., between June 29 and September 30, 1918, was unjust and unreasonable. Reparation is asked, including an item for excess war taxes paid. Rates are stated in this report per long ton, unless otherwise shown.

The shipments moved from Scranton over the Delaware, Lackawanna & Western Railroad to Lake Junction, N. J., a distance of 103.6 miles, and thence via the line of the Central Railroad Company of New Jersey to Dover, 3.8 miles. Prior to June 25, 1918, a commodity rate of \$1.29 applied to Lake Junction and the sixth-class rate of 3 cents per 100 pounds, or 67.2 cents per long ton, beyond. The effect of General Order No. 28 issued by the Director General of Railroads was to increase on June 25, 1918, the \$1.29 rate to \$1.60 and the 3-cent rate, the other factor, to 7 cents per 100 pounds or \$1.60 per long ton. This resulted in a combination rate of \$3.20 from Scranton to Dover, on which basis charges were assessed. The factor of \$1.60 for the haul of 3.8 miles beyond Lake Junction was manifestly unjust as compared with the commodity rate of \$1.60 for the

haul of 103.6 miles from Scranton to Lake Junction. The Director General, recognizing the impropriety of this adjustment, subsequently, on December 2, 1918, established a joint commodity rate of \$2.40. This rate is still in effect. The defendants offer no defense of the rate assailed, admit that it was unreasonable to the extent that it exceeded \$2.40, and express their willingness to pay reparation on that basis.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2.40 per long ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record and the complainant should prepare a statement showing the details of the shipments, in accordance with rule V of the Rules of Practice. This statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. We are without power to order refund of war taxes.

No order for the future is necessary.

57 I. C. C.

No. 10603.

CHEVROLET MOTOR COMPANY OF CALIFORNIA
v.
DIRECTOR GENERAL, CHICAGO & NORTH WESTERN
RAILWAY COMPANY, ET AL.

Submitted June 25, 1919. Decided February 16, 1920.

Rate on baking and drying ovens, in carloads, from Detroit, Mich., to Oakland, Calif., found to have been unreasonable. Reparation awarded.

Fred L. Pomeroy for complainants.

Robert W. Fyfe and *C. A. Magaw* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATTCHISON, AND EASTMAN.

BY DIVISION 3:

The complainant herein alleges by complaint seasonably filed that the charges collected on two baking and drying ovens, shipped in three carloads in August, 1916, from Detroit, Mich., to Oakland, Calif., were unreasonable, unjustly discriminatory, and unduly prejudicial. An award of reparation only is asked. Rates will be stated in amounts per 100 pounds.

The ovens were practically alike and consisted of vent pipes, steel flooring, angle irons, oven panels, and doors shipped "knocked down" and loose in the cars. One, measuring 10 by 15 by 50 feet and designed to be heated by gas, was for use in baking or hardening fresh enamel on automobile bodies; the other, measuring 8 by 8 by 100 feet and designed to be heated by steam, for drying fresh paint on automobile chassis. Both were part of the equipment of complainant's newly established factory at Oakland. They were shipped on August 2, 16, and 21, 1916, and moved over the lines of the New York Central, Indiana Harbor Belt, Chicago & North Western, and Union Pacific railroads and Southern Pacific Company. Such articles were not specifically rated in the governing western classification and no commodity rate covering them was published. Charges were collected in the sum of \$3,553.17 at the first-class rate of \$3.50,

57 L. C. C.

based on an aggregate weight of 101,519 pounds. The western classification contained the following item:

Stoves, stove furniture, furnaces, and parts of—

Ovens:

Enamelling ovens—

K. D. flat, in boxes or crates----- L. C. L. 2

S. U., in boxes or crates----- D1

There being no carload rating specified, in accordance with a general rule of the classification the less-than-carload rating would be applicable to any quantity, but that rating applied on this article only in the packages named. The classification rules made no provision for the assessment of ratings on these articles shipped loose. The transcontinental tariff naming the rates reads:

When articles are provided for in packages of the second class (which includes crates) and are shipped * * * loose * * *, they will, when so shipped, take 50 per cent higher rate than when in packages of the second class, but not to exceed the class rates named in this tariff.

It appears that the first-class rate was collected under this provision, which clearly applied only to the articles on which commodity rates were named in the same tariff. It formed a section of a rule the first section of which reads:

Unless otherwise provided in individual rate items, the various kinds of packages named in this tariff must meet the requirements specified below.

As no rate legally applicable to the shipments was in effect at the time of movements, it becomes necessary to determine what would have been a reasonable charge for the service rendered. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded \$1.30, the average of four rates from Detroit to California terminals as follows: Commodity rates of \$1.10 on lumber-drying kilns, \$1.35 on cooling-room material; and 95 cents on refuse-burner material; and the fifth-class rate of \$1.80 on brick driers. These comparisons, as presented, only show what appears in the tariff items and are not supplemented by information helpful for comparative purposes. No evidence was introduced to support the allegations of unjust discrimination or undue prejudice.

Complainant urges that the classification item under which the rate was applied was intended for application to small ovens, 18 by 24 by 12 inches, such as are used by jewelers, and also to ovens of smaller size for coloring purposes, and not to ovens of the size shipped. The panels of the ovens shipped were 28 feet long, 28 inches wide, and 2 inches thick. Complainant insists that they were not susceptible to damage in the course of transportation and that

boxing or crating was unnecessary for their protection, would make them more bulky, and would necessitate the use of additional equipment.

It was testified on behalf of defendants that the classification item quoted has been in effect since prior to January 1, 1899, and was intended to cover ovens of the kind shipped. In this connection it should be observed that the automobile industry was in its infancy in 1899; that production was small; and that the use of large ovens in that industry is of quite recent development. Indeed, the fact that "enameling ovens" were carried in the western classification as a subhead under "Stoves, Stove Furniture, Furnaces and Parts of" supports complainant's contention that the item in question was not intended to embrace ovens of the kind and unusual size shipped.

Effective August 1, 1917, less than a year after the shipments moved, the western classification committee published the following item, which defendants admit includes ovens of the kind under consideration:

Ovens:

Baking, iron or steel, not otherwise indexed by name—Other than reel:

S. U., legs attached or detached, or without legs, in boxes or crates, l. c. l.....	1
K. D., in boxes, bundles, or crates, l. c. l.....	3
Loose or in packages, straight or mixed, c. l., min. wt. 24,000 lbs., subject to Rule 6-B.....	A

These ratings are still in effect.

We find that a reasonable rate for the transportation of these shipments would have been the contemporaneous class A rate of \$1.82 per 100 pounds, minimum 24,000 pounds, subject to rule 6-B; that complainant made the shipments as described and paid and bore charges thereon in excess of those which would have accrued on the basis herein found reasonable; that it has been damaged to that extent; and that it is entitled to reparation from defendants in the sum of \$1,561.74, with interest.

An order awarding reparation will be entered, but as the class A rating has been in effect for over two years and is satisfactory to complainant no order for the future is necessary.

No. 10404.

WINONA OIL COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted November 24, 1919. Decided February 17, 1920.

Rates for the transportation of petroleum and its products, in carloads from the midcontinent oil field in Kansas and Oklahoma to Eau Claire, Chippewa Falls, and Menomonie, Wis., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

Clifford Thorne, Ralph Merriam, and J. D. Reynolds for complainant.

O. W. Dynes, F. E. Andrews, and R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, Commissioner:

The complainant, a corporation, distributes petroleum and its products, principally gasoline, kerosene, lubricating oils, and greases from tank wagons and filling stations at various points in Wisconsin and Minnesota, including Eau Claire, Chippewa Falls, and Menomonie, Wis., the points here in issue. Its complaint alleges that the rate of 40.5 cents per 100 pounds on these commodities in carloads from the midcontinent oil field in Kansas and Oklahoma to the points named is unreasonable and unduly prejudicial to the extent it exceeds a rate of 35.5 cents in effect to Durand, Wis., and Wabasha, Minn., and points in their vicinity. At the hearing, however, the complainant conceded that a rate of 36.5 cents would be reasonable and nonprejudicial for the future, and waived a prayer for reparation. Throughout this report rates are stated in cents per 100 pounds.

Eau Claire, Chippewa Falls, and Menomonie are in central western Wisconsin on the lines of the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, and the Chicago, St. Paul, Minneapolis & Omaha Railroad. Eau Claire and Chippewa Falls are also served by the Minneapolis, St. Paul & Sault Ste. Marie

Railway. Wabasha lies on the west bank of the Mississippi River on the main line of the Milwaukee, and Durand is 19 miles north of Wabasha on the Chippewa Valley division of that road. Eau Claire, Chippewa Falls, and Menomonie are, respectively, 42, 48, and 63 miles north of Wabasha.

Group rates apply on petroleum and its products from the mid-continent oil field to this general territory of destination. The group in which the complaining points are located extends from just east of Durand to Duluth, Minn., and Ashland, Wis., on Lake Superior; east to Marinette, Wis., on Green Bay; and west to St. Cloud, Minn. Immediately south and east of the eastern portion of this group is a group which takes a rate of 36.5 cents; and south and west of the 40.5-cent group, and including St. Paul, Minn., is a group to which the rate is 35.5 cents. In *Midcontinent Oil Rates*, 36 I. C. C., 109, we fixed as reasonable maximum rates to St. Louis, Mo., 20 cents; Chicago, Ill., 25 cents; Chicago territory, 30 cents; and St. Paul territory, 31 cents; and stated that rates to related points not named should be lined up with those prescribed to particular points or groups of points. Under that adjustment the rates to the destination points of this complaint were made 5 cents over St. Paul, the uniform difference which obtains generally on fifth class, the rating applicable to petroleum and its products. Accordingly the rate to these points prior to June 25, 1918, was 36 cents. On that date it was increased to 45 cents, or 25 per cent, under General Order No. 28 of the Director General of Railroads. Subsequently, a uniform increase of 4.5 cents in all oil rates, in lieu of the 25 per cent increase, was authorized, and effective July 25, 1918, this rate was readjusted to the present basis of 40.5 cents. No complaint is made of this general increase of 4.5 cents.

The bulk of the complainant's shipments moves through Kansas City and Wabasha, although it appears that some move through Chicago and a few possibly by way of St. Paul.

Durand, at which point the complainant also has a distributing station, is the only town east of the Mississippi River receiving car-load shipments of petroleum and its products to which the group rate of 35.5 cents has applied. In readjusting oil rates following our decision in *Midcontinent Oil Rates*, *supra*, defendants' witnesses testified that Durand was erroneously included in the 35.5-cent group, and that it should have been placed in the 40.5-cent group. They stated that steps were being taken to correct this alleged misgrouping by placing Red Cedar, Wis., and stations south thereof to Trevino, Wis., on the Chippewa division of the Milwaukee, including Durand, in the 40.5-cent group. This change has been published, effective December 31, 1919, and the 35.5-cent group, instead of

jutting northward just to include Durand as its northern or eastern apex, has been separated, between Winona, Minn., and St. Paul, from the 40.5-cent group, by the east bank of the Mississippi River. This adjustment is unsatisfactory to the complainant which objects to its rate to Durand being increased, and asks that Eau Claire, Chippewa Falls, and Menomonie be placed in the 36.5-cent group, the inclusive northern line thereof to be drawn west from Marshfield, Wis., to Stillwater, Minn.

The Standard Oil Company, which is the complainant's only competitor at Eau Claire, Chippewa Falls, and Menomonie, and which fixes the selling price of oil in that territory, operates a distributing service similar to that of complainant at those points as well as at many other towns, including Durand. It generally transports crude oil by pipe line from the midcontinent oil field to its refinery at Whiting, Ind., and the products thence by rail or by lake and rail to destinations. The complainant shows, based on a cost analysis of the Federal Trade Commission for 1913, that the cost of pipe-line transportation from the Cushing field in Oklahoma to Whiting, assuming that operating expenses have increased 50 per cent since 1913, is 6.35 cents. The freight rate on refined petroleum from Whiting to points in the 40.5-cent group is 24.5 cents, which makes the total transportation cost to the Standard Oil Company approximately 30.85 cents. In addition the Standard Oil Company has a tank-line service from Whiting to Superior, Wis., and Duluth, from which ports the rail rate to the points here in issue is 15.5 cents. The complainant contends that we should take into consideration this pipe-line competition in passing upon the rates here under attack. We may not, however, require rail carriers to reduce rates that are not shown to be unreasonable in and of themselves in order that the users of such rates may better compete with others who are in a position to utilize the less costly service of pipe lines.

During the six-months period ended March 31, 1919, the complainant received at Eau Claire, Chippewa Falls, and Menomonie, 55 carloads of petroleum products which averaged 53,852 pounds each. Using this average weight and an average distance of 215 miles from 26 Kansas and Oklahoma refining points to Kansas City and the short-line distances beyond, the complainant submits the following comparisons:

To—	Distance.	Rate.	Rate per ton-mile.	Earnings per car.	Earnings per loaded car-mile.	Earnings per loaded and empty car-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Cents.</i>
Chippewa Falls, Wis.....	814	40½	9.9	\$218.10	26.79	13.40
Eau Claire, Wis.....	801	40½	10.1	218.10	27.23	13.62
Menomonie, Wis.....	788	40½	10.3	218.10	27.68	13.84
Durand, Wis.....	802	35½	8.9	191.17	23.83	11.92
Wabasha, Minn.....	783	35½	9.1	191.17	24.41	12.21
Winona, Minn.....	727	34½	9.5	185.79	25.55	12.78
Marshall, Wis.....	793	36½	9.2	196.56	24.79	12.39
Marshfield, Wis.....	859	36½	8.2	196.56	22.00	11.00
Merrill, Wis.....	880	36½	8.3	196.56	22.34	11.17
Grand Rapids, Wis.....	845	36½	8.6	196.56	23.26	11.63
Ashland, Wis.....	878	40½	9.2	218.10	24.84	12.42
Duluth, Minn.....	845	40½	9.7	218.10	25.81	12.91
La Crosse, Wis.....	729	34½	9.4	185.79	25.49	12.75

This showing is compared also with the estimated average earnings on all traffic of 9.88 mills per ton-mile and 20.68 cents per loaded car-mile for an average haul of but 238 miles for 16 of the principal carriers which participate in the transportation of petroleum and its products from the midcontinent field to these points. In arriving at these amounts the complainant has added 25 per cent to the figures for the year ended December 31, 1917. In addition, it is shown that the tank cars in which the oil is transported are owned by the consignors, and are returned empty, making the earnings per loaded and empty car-mile just one-half of the earnings per loaded car-mile, whereas the average earnings of these carriers per loaded and per empty car-mile is 14.98 cents as compared with 20.68 cents per loaded car-mile. The inference is that for a haul about three times as long, and with 100 per cent empty return movement, the complainant's oil traffic produces approximately the same loaded and empty car-mile earnings as the average on all traffic which does not include 100 per cent empty movement. Countering, the defendants produced exhibits of average distances and average rates to the 35.5-cent and 40.5-cent groups. On an average the 40.5-cent group is 98 miles farther distant from the midcontinent field than is the 35.5 cent group and the earnings per loaded car-mile are the same, namely, 25.3 cents. Defendants submit other comparisons but admit that these compared rates are to a somewhat higher-rated territory than that under consideration here. In *Codington County Oil Co v. A., T. & S. F. Ry. Co.*, 53 I. C. C., 234, we found that the rates on petroleum and its products from points in the midcontinent field to destinations in South Dakota had not been shown to be unreasonable, except for the period during which the rates to Watertown from Oklahoma exceeded the combination of intermediate rates over Pipestone. The distance from Oklahoma to Watertown is 771 miles, and the rate, prior to General Order No. 28, was 44 cents.

Petroleum and its products now take to Eau Claire, Chippewa Falls, and Menomonie, 11 cents over the Chicago rate. The complainant contends that if any commodity traffic should take 6 cents over Chicago, which is the differential applied on traffic generally to these points from points of origin composing the midcontinent field, it is the oil traffic. This same contention was advanced in *Mid-continent Oil Rates*, *supra*, wherein we stated:

To apply the differential to points beyond Chicago on oil traffic from the mid-continent field would result in unreasonably low rates, and a departure from the usual application of differentials is therefore justified.

In a proposed report in this case which was served upon the parties the examiner recommended that we find that the rates assailed are not shown to be unreasonable, but that the defendants by maintaining a lower rate to Durand than to Eau Claire, Chippewa Falls, and Menomonie, were subjecting the complainant to undue prejudice. As already pointed out, the rate of 40.5 cents has been published to apply from Durand, but it may be observed that there is no showing of record that the complainant's competitor shipped oil from the midcontinent field to Durand at the 35.5-cent rate, or that complainant's plants at Eau Claire, Chippewa Falls, and Menomonie serve the same territory as Durand.

We find that the rates assailed are not shown to be unreasonable or unduly prejudicial. The complaint will be dismissed.

57 I. C. C.

No. 10378.
FRANKLIN C. CORNELL
v.
LEHIGH VALLEY RAILROAD COMPANY AND DIRECTOR
GENERAL.

Submitted June 10, 1919. Decided February 12, 1920.

Rates on anthracite coal, in carloads, from Coxton, Pa., to East Ithaca, N. Y., found to have been unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect to Ithaca, N. Y. Reparation awarded.

E. H. Bostwick and *O. L. McCaskill* for complainant.

R. W. Barrett for Director General and Lehigh Valley Railroad Company.

REPORT OF THE COMMISSION.

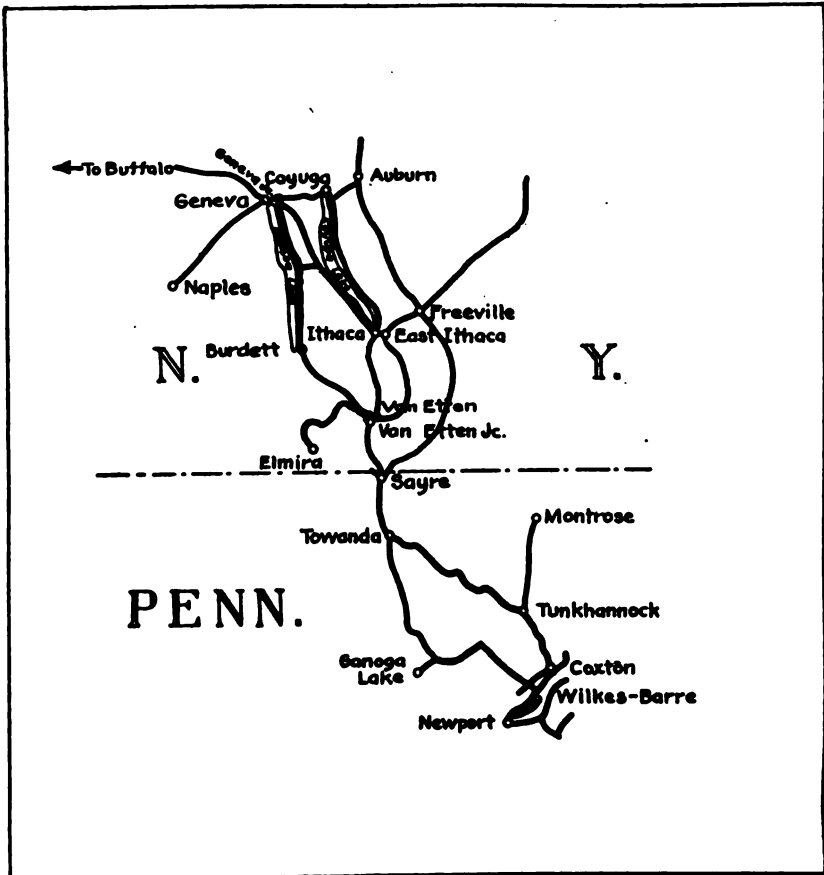
DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

Complainant conducts a retail coal business in the city of Ithaca, N. Y., with a coal yard adjacent to the tracks of the Lehigh Valley Railroad at a station designated East Ithaca. His complaint filed December 27, 1918, as amended, alleges that the rates on anthracite coal, in carloads, from Coxton, Pa., to East Ithaca were and are, as compared with the rates to Ithaca, unduly prejudicial to him and unreasonably preferential of his competitors located at Ithaca, in violation of section 3 of the act to regulate commerce and section 10 of the federal control act. Reparation is asked on shipments which moved in the period between January, 1917, and March, 1919, both inclusive.

At the hearing defendants agreed to publish for the future the same rates on anthracite coal from Coxton to East Ithaca as to Ithaca, but specifically denied that the rates attacked have been unlawful in the past. Complainant is satisfied with this basis for the future. The case, therefore, resolves itself into a claim for reparation. Rates are hereinafter stated in dollars and cents per gross ton.

Coxton is the billing point for all northbound coal from the Lehigh, Schuylkill, and Wyoming regions of Pennsylvania, and is about 12 miles north of Wilkes-Barre, Pa., and 120 miles southeast
57 I. C. C.

of Ithaca. The city of Ithaca for the purposes of this case may be divided into two parts, viz, the valley and the hill, the former comprising the business part of the city, the older residential section, and the freight and passenger stations of the Lehigh Valley and the Delaware, Lackawanna & Western Railway. That part of the city designated as the hill includes the principal residential section and



Cornell University with its campus. Complainant's coal yard and the East Ithaca station are located on the hill in the vicinity of Cornell University. They are approximately 500 feet higher than, and 1.5 miles from, the station of the Lehigh Valley in Ithaca. All of complainant's competitors receive their coal in the valley.

The Lehigh Valley reaches Ithaca and East Ithaca by different lines of railroad as shown by the above map.

All coal from Coxton destined to Ithaca or East Ithaca moves over the main line and in the same trains as far as Van Etten Junction, N. Y., a point 20 miles from Ithaca and 25 miles from East Ithaca. The branch reaching East Ithaca is known as the Elmira, Cortland & Northern division, hereinafter referred to as the East Ithaca branch. The line to Ithaca also leaves the main line at Van Etten Junction and runs along Cayuga lake, rejoining the main line at Geneva Junction, N. Y. This is a part of the Seneca division, but for the purposes of this case will be referred to as the Ithaca branch. All of the Lehigh Valley's through passenger trains between Buffalo and New York operate over this branch. The line which is used for all through freight, and the one that may properly be termed the main line, extends from Van Etten Junction along Seneca lake to Geneva, N. Y. This line is double tracked and is a part of the Seneca division, but will be referred to herein as the main line.

Prior to April 1, 1916, the rates on coal from Coxton to Ithaca and East Ithaca were the same, \$1.65 on prepared sizes and \$1.50 on smaller sizes. On that date and in conformity with our decision in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter called the *Anthracite Case*, which prescribed, among other rates, maximum rates on coal from Lehigh producing fields in Pennsylvania to Ithaca, the rates to Ithaca were reduced to \$1.45 on prepared sizes and \$1.32 on pea and smaller sizes. No change was made in the rates to East Ithaca. While the latter point was not specifically mentioned in the *Anthracite Case*, we said that to related points the carriers would be required to establish rates in harmony with those prescribed. The table below shows the rates to Ithaca and East Ithaca prior to April 1, 1916, and the changes that have since been made:

Rates on anthracite coal.

From Coxton, Pa.—	To Ithaca, N. Y.		To East Ithaca, N. Y.	
	Prepared sizes.	Pea and smaller sizes.	Prepared sizes.	Pea and smaller sizes.
Prior to April 1, 1916.....	\$1.65	\$1.50	\$1.65	\$1.50
From April 1, 1916, to April 1, 1918.....	1.45	1.32	1.65	1.50
From April 1, 1918, to April 4, 1918.....	1.45	1.32	1.80	1.65
From April 4, 1918, to June 25, 1918.....	1.60	1.47	1.80	1.65
From June 25, 1918, to July 19, 1919.....	1.90	1.80	2.10	2.00
From July 19, 1919, to present date.....	1.90	1.80	1.90	1.80

The rates to both Ithaca and East Ithaca were increased 15 cents per ton in April, 1918, as a result of our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303. They were again advanced June 25, 57 I. C. C.

1918, as a result of General Order No. 28 of the Director General of Railroads. During the period from April 1, 1916, to January 1, 1917, complainant was not interested in the rate situation, inasmuch as the Lehigh Valley Coal Sales Company absorbed the difference in rates and made complainant a delivered price which was the same as that made to his competitors.

In justification of the failure to maintain the rate parity between East Ithaca and Ithaca after the effective date of our order in the *Anthracite Case*, defendants rely principally on three propositions: First, that the operating conditions on the two branches are substantially dissimilar; second, that the location of complainant's coal yard on the hill is such that he enjoys a monopoly of the hilltop trade and that any difference in freight rates was more than offset by the natural advantage of his location; third, that during the period in question war conditions made it possible for coal dealers to sell at any price all coal they could secure. These points will be considered in order.

Defendants state that the Ithaca branch is highly developed and capable of efficient operation, and that the track and bridges were constructed and are maintained for the heaviest locomotives. On the other hand they assert that the East Ithaca branch was constructed for light branch-line traffic and light locomotives, and could not be brought up to a high state of efficiency except at large expense. The tractive power of the largest locomotive that can be operated on the Ithaca branch is four times as great, they say, as that of the largest locomotive that can be operated over the East Ithaca branch.

It is admitted by defendants that larger territory and population are served by the East Ithaca branch than by the Ithaca branch. No figures have been introduced to show the relative density of tonnage. From the record it may fairly be inferred that the Ithaca branch has been developed and maintained at a high state of efficiency for the purpose of enabling the Lehigh Valley to operate its through passenger trains over this route, thereby giving Ithaca and Cornell University the advantage of through service. The controlling grade for tonnage-rating purposes on the one branch is substantially the same as on the other. The maximum on the Ithaca branch is about 16 feet to the mile, and on the East Ithaca branch about 15 feet. The elevations of Van Etten, East Ithaca, and Ithaca are, respectively, 1,010 feet, 872 feet, and 390 feet. Defendants also state that the cost of operation per 1,000 tons hauled 1 mile on the East Ithaca branch is 400 per cent of the similar cost on the Seneca division. It is not shown how this conclusion was reached and the comparison is of little value, since the Seneca division includes the main line over

which through freight trains are operated. No allocation is made showing the cost of handling traffic over the Ithaca branch as compared with the East Ithaca branch.

Complainant and Cornell University are the only receivers of coal at East Ithaca. Coal and general merchandise constitute the principal tonnage received there. Class rates on the Lehigh Valley from New York and Wilkes-Barre, representative points of origin, and commodity rates on lumber, clay, iron, and steel articles from New York, on cement from the Lehigh district, and on brick from Perth Amboy, N. J., were and are the same to East Ithaca as to Ithaca. The record discloses only a few instances in which the rates to East Ithaca are higher than to Ithaca. In view of the fact that defendants have maintained a rate parity between Ithaca and East Ithaca on substantially all traffic from the east except coal, it would seem that they have not seriously considered that the cost of operation on the one line justified a higher basis of rates than on the other.

The second contention is that the advantage of complainant's location has offset any disadvantage he may have experienced in rates. Where the transportation conditions are substantially similar we have never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over his competitor located at the latter. Defendants, however, urge that complainant was not in actual competition with other coal dealers in Ithaca for the reason that the railroad delivered his coal on the hilltop, whereas his competitors could only reach that part of the city by hauling their coal up a steep grade. The record clearly establishes the fact that there is active competition between the complainant and the other coal dealers in Ithaca both for the trade in the valley and for the trade on the hill. Complainant aptly expressed the situation when he stated that coal dealers, like the milkmen, were all over the city.

Exhibits were introduced showing the location of complainant's customers on the hill and in the valley. Similar exhibits show that complainant's competitors have a substantial part of the hill-top trade. Coal is hauled by teams or trucks and the same price is made by dealers wherever the customer is located. For sidewalk delivery to any part of the city a dealer pays for hired teams or trucks at the rate of 50 cents per ton and for any further carriage or stowage by manual labor there is an additional payment of 25 cents per ton. These payments appear to be uniform with all dealers and the amounts thereof are included in the cost to the consumer whether the services are performed by hired teams or trucks or by the dealer's own facilities. Complainant asserts that because of ice and snow in the winter season it is more difficult and ex-

pensive for him to haul coal down the hill than it is for his competitors to haul it up. He admits, however, that in summer time his location is of some advantage, but explains that the summer trade is small as compared with the winter business. The record is clear that complainant has keen competition for the hilltop trade and that his location has given him no monopoly in that part of the city.

We come now to the point that war conditions enabled complainant to dispose of all the coal that he could secure and at any price, and that he has not, therefore, been damaged by the difference in rates. It is conceded that during the period in question there was a serious coal shortage. In November, 1917, the Fuel Administrator established at Ithaca maximum prices for the distribution of anthracite coal. The price originally fixed considered various elements of cost and included the freight rates and a profit of 25 cents per ton. Complainant called the attention of the local fuel administrator to the difference in rates after the price of coal had been fixed for Ithaca. He was then offered the privilege of adding 20 cents per ton to the sale price fixed for Ithaca in order to offset the difference in rates. Complainant insists that he was unable to take advantage of this offer as it would have meant a loss of good will with a consequent serious loss of business when normal conditions again obtained. The regulations of the Fuel Administrator were withdrawn in February, 1919. During the periods after that date and prior to November, 1917, when the Fuel Administrator was not in control, the evidence shows that complainant absorbed the difference in rates in making a price to his customers, in order that he might be in a position to offer coal on the same basis as his competitors. From the record as a whole it is clear that during the entire period in question complainant absorbed the difference in freight rates in making a price to his customers.

EASTMAN, *Commissioner*:

The foregoing is, with some modifications, the statement of the pertinent facts by the examiner who heard the testimony and which was served upon the parties in the form of a proposed report, containing his recommendations that the rates exacted for the transportation of anthracite coal, in carloads, from Coxton to East Ithaca, during the period covered by the complaint should be held unduly prejudicial to the extent that they exceeded those contemporaneously in effect to Ithaca, that complainant should be found to have been damaged, and that reparation should be awarded. Exceptions were filed by defendants.

Defendants contend that the operating conditions over the East Ithaca branch as compared with those over the Ithaca branch just-

fied the difference in rates. While the evidence shows that the line from Van Etten to Ithaca is better ballasted, has heavier rails, and in general is better constructed than the line from Van Etten to East Ithaca, it also shows that a greater population is served by and a heavier volume of coal moves over the East Ithaca branch than over the Ithaca branch and that the former branch has the advantage in the matter of grades. It was testified on behalf of complainant and not disputed by defendants that in negotiating the controlling grade on the Ithaca branch it is necessary either to split the train or to use an additional engine. The evidence as to the comparative costs of transportation is somewhat conflicting and not conclusive. In considering this matter it is to be observed that up to Van Etten the hauls are identical and that the hauls beyond that point are only about 19 per cent of the through hauls.

Defendants contend that no weight should be accorded the fact that they maintained Ithaca and East Ithaca upon the same basis with respect to class and commodity rates from various points, averring that these were merely "paper rates." It is in evidence, however, that cement, brick, structural iron, general merchandise, and other commodities were received to some extent at East Ithaca. In any event, we think the record sufficient to sustain the conclusion of the examiner without reference to the fact that defendants maintained East Ithaca and Ithaca on the same basis in the case of other rates.

Defendants argue that complainant had no competition at Ithaca during the reparation period and therefore suffered no damage because, first, during that period any dealer could sell at any price every pound of coal he could get and, second, the location of complainant's place of business at Ithaca gave him a natural advantage over other coal dealers in respect of the trade on the hill, and irrespective of the demand for coal during the war, diminished the possibility of competition for the sale of coal in a large portion of the city adjacent to his coal trestle. The record is clear that complainant could and did sell all of his available coal. The claim for reparation is not based upon any loss of business, but rather upon the alleged fact that because of the difference in the freight rate complainant was forced to shrink his profits by the amount thereof. Complainant's positive testimony is that during the reparation period he did not charge any higher price than his competitors, and that he could not have charged a higher price without serious loss of prestige and future business, and there is no evidence to the contrary. While there was no competition for present business, there was competition for future trade. This future business and good will of his customers was a thing of value to complainant and must

be recognized as a justification for meeting the prices of his competitors.

There is no merit in defendants' contention that the natural advantage of complainant's location offset any disadvantage in the freight rate. If there is any substantial natural advantage to complainant in his location on the hilltop that is his and can not be taken away from him. Furthermore, the evidence shows that it did not give complainant a monopoly of the hilltop trade or enable him to increase his prices above those of his competitors.

Upon consideration of the whole record we adopt the foregoing statement of the examiner, as modified, and make it a part of this report. We are of opinion and find that the rates on anthracite coal, in carloads, from Coxton, Pa., to East Ithaca, N. Y., during the period in which the shipments covered by complainant's claim for reparation moved, were unduly prejudicial to complainant to the undue preference of his competitors at Ithaca, to the extent that they exceeded the rates contemporaneously in effect on anthracite coal, in carloads, from Coxton to Ithaca, N. Y.; that complainant made shipments as described and paid and bore the charges thereon at the rates herein found unduly prejudicial; that he has been damaged to the extent that the rates exacted thereon exceeded the rates contemporaneously in effect to Ithaca; and that he is entitled to reparation, with interest. The exact amount of reparation can not be determined upon this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

HALL, *Commissioner*, dissenting in part:

In my opinion rate disparity is not shown to have been the proximate cause of any injury suffered by complainant. He has failed to establish the fact of his injury and the amount of resulting damage with the degree of particularity and certainty which would be required in a court to support a verdict for damages. This I understand to be requisite in cases of this nature.

No. 10799.

LOWRY LUMBER COMPANY

v.

DIRECTOR GENERAL, MICHIGAN CENTRAL RAILROAD
COMPANY, ET AL.

Submitted January 12, 1920. Decided February 17, 1920.

Allegation that charges on a carload of yellow-pine lumber from Silsbee, Tex., to Nashville, Mich., were unreasonable because assessed on an excessive weight not sustained. Complaint dismissed.

G. H. Lowry for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions were filed.

The complainant, formerly the Beekman Lumber Company, is a corporation engaged in the lumber business at Kansas City, Mo. It alleges that unreasonable charges were collected because of an excessive weight applied by defendants on a carload of lumber shipped February 23, 1918, from Silsbee, Tex., to Cairo, Ill., and reconsigned to Nashville, Mich., and prays reparation.

The shipment consisted of 21,529 feet of yellow-pine lumber. Charges were collected at destination based on a weight of 60,300 pounds, the weight registered at point of origin by the track scales of the Gulf, Colorado & Santa Fe Railway, the initial carrier. Complainant asserts that the lumber was air dried and contends that the charges should have been based on an estimated weight of 54,000 pounds, arrived at by using an estimated weight of 2,500 pounds per 1,000 feet prescribed for dry lumber of the kind in question in a table used by lumber manufacturers and dealers. Complainant never saw the lumber, which was bought and sold by correspondence, and complainant's information as to its condition was obtained from the shipper. No one with personal knowledge of the condition of the lumber appeared at the hearing.

Defendants introduced in evidence a certified copy of the Gulf, Colorado & Santa Fe scale ticket bearing the signature of the weigh-

master which shows that the car was weighed and check weighed, uncoupled, at Silsbee with the following result: gross 97,000 pounds, tare 36,700 pounds, net 60,300 pounds. The scales at Silsbee are automatic and a considerable amount of lumber is weighed at that point; one person does the weighing under the supervision of another. Defendants contend that the chance for a mistake is remote. They assert that estimated weights are used only when actual weight is not obtained; and that estimated weights are unreliable because of the fluctuation in the weight of lumber during the seasoning period. *Noble v. D. & T. S. L. R. R. Co.*, 20 I. C. C., 60.

Upon the record we find that the weight applied was not excessive and that the charges computed thereon were not unreasonable. The complaint will be dismissed.

57 I. C. C.

No. 10639.¹

SAGINAW & MANISTEE LUMBER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
AND DIRECTOR GENERAL.

Submitted December 8, 1919. Decided February 17, 1920.

Rates on locomotive and tender, dead, on their own wheels, from Bellemont, Ariz., to Los Angeles, Calif., and from Los Angeles to Williams, Ariz., found to have been and to be unreasonable. Reparation awarded.

E. H. B. Avery and *R. A. Nickerson* for complainant.

E. W. Camp for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, and EASTMAN.

By DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions thereto were filed.

Complainant is a corporation engaged in the lumber business at Williams, Ariz. By complaints filed May 12 and August 11, 1919, it alleges that the rates charged on a locomotive and tender, dead, on their own wheels, shipped from Bellemont, Ariz., to Los Angeles, Calif., and from there back to Williams, were unreasonable. Reparation and the establishment of reasonable rates for the future are asked.

On February 8, 1919, the locomotive with its tender was shipped from Bellemont to Los Angeles, a distance of 532 miles, for repairs. The repairs were completed, and on July 2, 1919, it was reshipped to the complainant at Williams, an intermediate point 22 miles from Bellemont. Both to and from Los Angeles the locomotive and tender moved in defendant carrier's train as dead freight. Total charges in the sum of \$1,599.54, plus war taxes of \$47.99, were collected, based on the class E rates of 56.5 cents per 100 pounds and a weight of 144,520 pounds from Bellemont to Los Angeles and 54 cents per 100 pounds and weight of 145,000 pounds from Los Angeles to Williams. Complainant provided an attendant, who paid the regular passenger fare both ways.

Previous to the general increase in rates on June 25, 1918, under General Order No. 28 of the Director General of Railroads, the class

¹This report also embraces No. 10639 (Sub-No. 1), Same v. Same.

E rate from Bellemont to Los Angeles was 45 cents. Complainant does not attack the increase in rates, but for convenience offered in evidence an exhibit showing a comparison of this rate of 45 cents with class and commodity rates contemporaneously in effect on locomotives, dead, on their own wheels, from and to various points in western classification territory.

Based on the figures in this exhibit the charge for hauling a locomotive weighing 144,000 pounds would have averaged 42.17 cents per mile under the commodity rates from and to the points shown therein, and complainant contends that the charges collected for the movement in question should not have exceeded what would have accrued at that figure, plus the increase provided by General Order No. 28.

On behalf of defendants it is pointed out that class E is the lowest rating in western classification, and that this rating likewise applies on asphalt street paving contractors' outfits, locomotive derricks, and on steam shovels, on their own wheels. It is urged that there is little probability of another movement of this kind from and to these points, and that there is therefore no justification for the establishment of a commodity rate. While admitting that carriers have generally established commodity rates on locomotives, defendants urge that it was a mistake to do so as there were only one or two movements under the commodity rates, and the principal justification for the establishment of commodity rates, that of a regular volume of traffic, was lacking. Defendants further urge that locomotives are undesirable freight as they are excessively heavy on their drivers, making it difficult to control their brakes while in trains, and further that while the shipments moved over lines of considerable through tonnage density there is little traffic between the points of origin and destination and the route is over heavy grades and long stretches of desert.

Defendants' witness testified that under the American Railway Association Rules one member of that association would pay for the movement of an engine, under its own steam, over the tracks of another member of that association \$1 per mile, and in addition thereto the wages of a pilot over the home road and the cost of fuel and supplies used by the locomotive en route. He stated that the charges for such a movement for a distance equal to that from Bellemont to Los Angeles would amount to approximately \$977.05, and compares this with the charge of \$816.54 collected for the movement of complainant's locomotive from Bellemont to Los Angeles. The rule referred to, however, apparently covers the charges for the de-tour of trains by one carrier over the lines of another carrier.

In *Transportation of Locomotives and Tenders*, 21 I. C. C., 103, wherein we had under consideration the proposal of carriers in southern classification territory to substitute the sixth-class rates on locomotives, live or dead, on their own wheels, for the then existing distance rates, we held that locomotives on their own wheels were somewhat in the nature of an anomalous commodity particularly susceptible to individual treatment and should not be subjected to class rates. In that case we condemned the application of a distance basis, such as is here urged by complainant, on the ground that such a basis of rates disregarded weight and was therefore unfair to the carriers and discriminatory as between shippers. We likewise condemned the application of the proposed sixth-class rates on this traffic in southern classification territory and established for locomotives and for locomotives and tenders, dead, on their own wheels, a distance scale of rates based upon mills per ton-mile. The record in the instant case affords no basis for fixing such a distance scale for application to locomotives from and to the points in question.

An examination of the commodity rates on locomotives, dead, on their own wheels, shown in complainant's exhibit, discloses that several of these rates are slightly higher than 50 per cent of the contemporaneous class E rates. These commodity rates, however, average somewhat less than 50 per cent of the class E rates from and to the same points. In *Algoma Lumber Co. v. S. P. Co.*, 51 I. C. C., 529, we found that the class E rate of 32 cents charged for the transportation of a locomotive, dead, on its own wheels, from Klamath Falls, Oreg., to Dunsmuir, Calif., a distance of 112 miles, was unreasonable to the extent that it exceeded 17 cents, it being there shown that commodity rates established by defendant on this traffic in California and Arizona averaged slightly in excess of 50 per cent of the class E rates in effect from and to the same points. At rates of 30 cents from Bellemont to Los Angeles and 29 cents from Los Angeles to Williams, the shipments in question would have yielded approximately 11 mills per ton-mile, based on the gross weight.

We find that the rates charged were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed, 30 cents per 100 pounds from Bellemont to Los Angeles and 29 cents per 100 pounds from Los Angeles to Williams; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges collected and those that would have accrued on the basis herein found reasonable, and that it is entitled to reparation in the sum of \$745.48, with interest.

An appropriate order will be entered.

No. 10475.

RATH PACKING COMPANY

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.*Submitted July 5, 1919. Decided February 19, 1920.*

Rates charged for the transportation of fresh meats and packing-house products from Waterloo, Iowa, to Macomb and Galesburg, Ill., not found unreasonable. Complaint dismissed.

Walter E. McCornack for complainant.

A. P. Humburg, J. N. Davis, and Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.
BY DIVISION 3:

By complaint seasonably filed the complainant, a corporation engaged in the meat-packing business at Waterloo, Iowa, alleges that the rates charged on 52 mixed carloads of fresh meats and packing-house products, hereinafter referred to as meats and products, respectively, shipped between April 10, 1918, and January 18, 1919, from Waterloo to Macomb and Galesburg, Ill., were unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, to the extent that they exceeded rates of 16 cents prior to June 25, 1918, and 20 cents thereafter, contemporaneously in effect on meats and products to Chicago, Ill. Reparation only is asked. The rate of 20 cents was established to Macomb and Galesburg on January 20, 1919, subsequent to the movement, and is at present in effect. Rates will be stated in cents per 100 pounds.

Each shipment was billed to Macomb, the farther distant point, and was stopped at Galesburg for partial unloading. For this a charge of \$7.50 was collected and is not attacked. The movement was over the following routes:

	Distance to—	
	Galesburg.	Macomb.
	<i>Miles.</i>	<i>Miles.</i>
Illinois Central to Dubuque, Iowa, Chicago, Burlington & Quincy beyond.....	236.4	276.2
Chicago, Rock Island & Pacific to Rock Island, Ill., Chicago, Burlington & Quincy beyond.....	184.3	224.1
Chicago, Rock Island & Pacific to Burlington, Iowa, Chicago, Burlington & Quincy beyond.....	193.2	233

A third-class rate of 34 cents on meats and a commodity rate of 18.5 cents on products were applicable prior to June 25, 1918, and rates of 42.5 cents and 23 cents, respectively, thereafter, but under alternative provisions of the applicable mixed-carload rule, which is not attacked, minimum charges on many shipments were based on the meat rates while on some shipments charges at less-than-carload rates made lower and were assessed under proper tariff authority.

By way of comparison complainant cited numerous rates of which the following are representative:

Points of origin and destination.	Miles.	Rate before June 25, 1918.		Rate on and after June 25, 1918.	
		Meats.	Products.	Meats.	Products.
From Waterloo to—		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Galesburg, Ill.....	182	34	18.5	42.5	23
Peoria, Ill.....	221	20	16	25	20
Chicago, Ill.....	272	16	16	20	20
St. Louis, Mo.....	371	20	19.5	25	24.5
Kansas City, Mo.....	325	18.5	18.5	28	23
To Galesburg from—					
Cedar Rapids, Iowa.....	130	13.5	13.5	17	17
Ottumwa, Iowa.....	117	12	12	15	15
Des Moines, Iowa.....	209	18.5	15	23	19
Mason City, Iowa.....	272	18	16	22.5	20
St. Paul, Minn.....	360	20	20	25	25
Sioux Falls, S. Dak.....	446	22.5	22.5	28	28
Sioux City, Iowa.....	401	21.5	21.5	27	27
South Omaha, Nebr.....	333	18.5	18.5	23	23
Chicago, Ill.....	163	17.8	12.6	21.5	16
St. Louis, Mo.....	208	17.3	15.8	21.5	20

¹ Reduced to 20 cents Jan. 20, 1919.

In its comparisons complainant has used short-line distances in many instances, substantially less than the average distances via all routes. Complainant admits that the competition it encounters at Macomb is not so active as at Galesburg, where its branch house is located, and where its competitors received shipments from Ottumwa, Omaha, Chicago, and other points of origin. It appears that the only shipments to Macomb were made from Waterloo and Chicago.

The following table is a comparison of the rates charged and the rates to the basis of which reparation is sought:

From Waterloo—	Miles, average.	Rate before June 25, 1918.				Rate June 25, 1918, to Jan. 1, 1919.			
		Meats.	Ton-mile earnings.	Products.	Ton-mile earnings.	Meats.	Ton-mile earnings.	Products.	Ton-mile earnings.
To Galesburg:		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Rates charged.....	229	34	3	18.5	1.6	42.5	3.7	23	2
Rates to basis of which reparation is sought.....		16	1.4	16	1.4	20	1.7	20	1.7
To Macomb:									
Rates charged.....	240	34	2.8	18.5	1.5	42.5	3.5	23	1.9
Rates to basis of which reparation is sought.....		16	1.3	16	1.3	20	1.6	20	1.6

Prior to June 25, 1918, the minimum charges to Galesburg, based on 20,000 pounds at the meat rate, were \$68 per car from Waterloo, as compared with \$27 from Cedar Rapids, \$24 from Ottumwa, \$37 from Des Moines, and \$36 from Mason City. The third and fifth class rates from Waterloo to Galesburg since June 25, 1918, are 42.5 cents and 25 cents, respectively. Complainant referred to numerous rates as tending to show that meats usually move at commodity rates which are about 50 per cent of third class, and products at commodity rates about 80 per cent of fifth class. It also cited third and fifth class rates, and commodity rates on bones, cereal beverages, common brick, green salted hides, iron or steel scrap, scrap paper, and railway material from Waterloo to Galesburg, which were the same as those in effect to Chicago.

Defendants pointed out that for an average two-line haul of 240 miles to Macomb the car-mile earnings based on 20,000 pounds at the rates of 16 cents and 20 cents, asked, are 13.33 cents and 16.67 cents, while those of the Chicago, Burlington & Quincy on all freight for the year ended June 30, 1916, for an average distance of 288 miles, were 16.8 cents. They refer to car-mile earnings on meats of 17.13 cents and 21.29 cents for the one-line haul from Chicago to Macomb, 202 miles, at rates of 17.3 cents and 21.5 cents; but the earnings on products from Chicago to Galesburg are less than the earnings from Waterloo to Galesburg. Defendants contend generally that the rates asked are unduly low and that if reparation is awarded it should be on the same basis on shipments prior to June 25, 1918, as on subsequent shipments. They also contend that a reasonable rate on meats must necessarily be higher than on products. They rely on our decision in *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 548, and point out that these commodities are classified differently; that commodity rates based on percentages of class rates differ; that different rates on the two commodities apply from Chicago, Des Moines, Mason City, and St. Louis; and that different rates were asked by the present complainant in *Rath Packing Co. v. I. C. R. R. Co.*, 56 I. C. C., 303.

In that case we found the rate of 29.5 cents on meats from Waterloo to St. Paul, Minn., not unreasonable. This rate yielded ton-mile earnings of 2.9 cents for a haul of 202 miles. A rate of 23 cents on packing-house products, yielding 2.14 cents per ton-mile, was found unreasonable to the extent that it exceeded the fifth-class rate for the reasons stated in our report. As shown above the rates found not to have been unreasonable yielded ton-mile earnings considerably higher than the rates to the basis of which reparation is sought in this case. The rates cited by complainant show a wide variation, but there is no allegation of unjust discrimination or undue prejudice and no evidence of injury or damage resulting therefrom. Upon this record we find that the rates assailed were not unreasonable. An order will be entered dismissing the complaint.

No. 9007.

MATTHIESSEN & HEGELER ZINC COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted January 15, 1919. Decided February 28, 1920.

Rates on interstate traffic to and from complainant's plant at La Salle, Ill., found to have been unreasonable and unduly prejudicial to the complainant during periods between May 1, 1914, and March 6, 1915, when the charges of the La Salle & Bureau County Railroad were collected in addition to the rates to and from La Salle. Reparation awarded.

Luther M. Walter, John S. Burchmore, and Nuel D. Belnap for complainant.

L. C. Mahoney, Kenneth F. Burgess, and W. G. Wagner for Chicago, Burlington & Quincy Railroad Company; *J. H. Cherry, A. P. Humburg, F. C. Furry, and E. A. Smith* for Illinois Central Railroad Company; *M. A. Patterson and F. K. Crosby* for Chicago, Rock Island & Pacific Railway Company and its receiver; and *J. B. McCaffrey* for La Salle & Bureau County Railroad Company.

REPORT OF COMMISSION.

Division 3, Commissioner *Sal* has held ALL, AND EASTMAN.
CLARK, Commissioner:

A report in this case, proposed by the examiner, was served upon the parties. No exceptions were filed.

The complainant, a corporation, engaged in the manufacture of spelter, sheet zinc, and sulphuric acid at La Salle, Ill., alleges, by complaint filed June 30, 1916, that the rates on interstate traffic to and from its plant were unreasonable and unduly prejudicial during certain periods between May 1, 1914, and March 6, 1915, when the La Salle & Bureau County Railroad's switching charge of 15 cents per ton was added to the line-haul rates to and from La Salle. It asks reparation based upon claims which were filed within the statutory period.

Prior to May 1, 1914, the connecting carriers absorbed the La Salle & Bureau County's charge of 15 cents per net ton out of the through rates to and from La Salle. The charge was applied on all freight
57 I. C. C.

in carload lots of 20,000 pounds or over, including trap cars, switched to and from the public team tracks and private sidings and spurs of the zinc plant and other industries served; and had been in effect since March 16, 1907, unchanged except as to minimum weights and maximum charges for trap cars. On May 1, 1914, following the *Industrial Railways Case*, 29 I. C. C., 212, the absorptions were canceled by the Chicago, Burlington & Quincy and the Illinois Central railroad companies; May 2, 1914, by the Chicago & North Western Railway; and on May 5, 1914, by the Chicago, Rock Island & Pacific Railway Company. Following the second report in the *Industrial Railways Case*, 32 I. C. C., 129, decided November 2, 1914, the absorptions were restored by the line-haul carriers, respectively, on February 8, March 6, January 25, and February 15, 1915, and are still in effect. The former and present absorptions have been subject to varying provisions as to the minimum line-haul revenue per car.

Complainant's application for the suspension of the tariffs which canceled the absorptions was denied, although similar tariffs, affecting many industrial railroads in central freight and trunk line association territories, were suspended and later were ordered canceled on or before July 15, 1915, in the *Second Industrial Railways Case*, 34 I. C. C., 596. The defendants state that the restoration of the absorptions in question was made in order to place the industries served by the La Salle & Bureau County on a parity with industries served by other common-carrier industrial lines, the absorption of whose charges had been continued by the orders of suspension. Three defendants admit that the rates increased by the failure to absorb the La Salle & Bureau County's charge were unreasonable to that extent.

The La Salle & Bureau County ^{based on} ~~they could~~ ^{it} ~~they~~ ^{they} could itself out as a common carrier of freight and has been treated as such by its connections, by the state commission, and by us. *La Salle & Bureau Co. R. R. Co. v. C. & N. W. Ry. Co.*, 13 I. C. C., 610. Since its incorporation as a common carrier in 1890 its capital stock has been owned by the stockholders of the complainant, hereinafter called the zinc company. The directorates of the railroad and the zinc company have been common, and the secretaries of the latter have been presidents of the former.

The railroad owns two locomotives; also 6.64 miles of main line and 1.02 miles of side tracks beyond the property line of the zinc company's plant. It leases from the zinc company and maintains about 3 miles of main line and sidings with a depot and other buildings in La Salle, all of which are necessary for its main line and public switching operations and none of which are devoted to the private use of the lessor. The zinc company owns a mile of standard-gauge spurs which are not leased to but are used by the railroad in

spotting and placing cars for loading and unloading within the plant; and the zinc company also owns and operates, as a facility of the plant, a narrow-gauge railroad with some 4 miles of intricate tracks and 600 cars. The La Salle & Bureau County also serves several independent industries at La Salle and grain elevators at Midway and Farrell, all of which have industrial or private sidings; and it maintains three public team tracks, one of which is on the leased line in La Salle. The haul from La Salle to the junction with the Illinois Central Railroad at Midway is 2.5 miles; with the Chicago, Burlington & Quincy Railroad at Hegeler and the Chicago & North Western Railway at La Salle Junction, 7 miles. Traffic to and from the Chicago, Rock Island & Pacific Railway is handled by the Illinois Central as an intermediate carrier between their junction and Midway. The La Salle & Bureau County performs some intermediate switching between the Illinois Central Railroad and the Chicago & North Western Railway. The traffic handled by it to and from industry or team tracks for the public, other than the zinc company, is estimated at from 5 to 10 per cent of the total.

The zinc company's inbound shipments consisted of zinc ore from the Joplin, Mo., and the Platteville, Wis., districts, coal screenings, lumber, sheet iron, sheet steel, saltpeter, and other commodities; outbound, spelter, sheet zinc, sulphuric acid, and other commodities to the eastern brass mills and foundries, to Gary, Ind., Cleveland, Ohio, Philadelphia, Pa., New York, N. Y., Boston, Mass., and other points.

For many years, with the exception of the periods mentioned, the La Salle rates included the placement and spotting of cars on the industrial tracks served by the La Salle & Bureau County; and the connecting lines have continuously applied the line-haul rates to other industries located in La Salle on the Illinois Central Railroad by absorbing the latter carrier's switching and spotting charges.

The complainant was in active competition with zinc plants located at Peru, Danville, Springfield, and Hillsboro, Ill., which required similar raw materials and manufactured like products. The rates to and from La Salle were generally equal to the rates to and from the competing plants; the rates on zinc ore to La Salle and Peru, for example, were 14 cents per 100 pounds from Joplin and 7 cents from Platteville prior to and during the periods of nonabsorption. There was no change in the relative adjustment of rates to and from La Salle, or to and from the competing plants for which the placement and spotting of cars on industry tracks was continued at the line-haul rates according to long established custom. *Car Spotting Charges*, 34 I. C. C., 609. The complainant purchased its inbound shipments from the same sources as its competitors, and sold its outbound products in the same markets in competition with them; it incurred an

additional expense of 15 cents per ton in the cost of its inbound materials, and was compelled to absorb a like charge out of profits from the sale of its products.

The La Salle & Bureau County performs a substantial switching service in interstate transportation for the general public between its junctions with the line carriers and its industries over tracks which are by no means confined within the plant of the controlling industry.

We find that the La Salle & Bureau County Railroad was and is a common carrier and that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded the rates to and from La Salle. We further find that complainant made and received, during the periods of nonabsorption, numerous interstate shipments which moved over defendants' lines and on which it paid and bore either the entire freight charges or the amounts collected in addition to the line-haul rates, and has been damaged and is entitled to reparation, with interest, to the extent of 15 cents per net ton; which conclusions are supported by *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.*, 36 I. C. C., 146; *Westport Stone Co. v. C., C. & St. L. Ry. Co.*, 48 I. C. C., 637; *Poteau Coal & Mercantile Co. v. A. & S. Ry. Co.*, 40 I. C. C., 459; *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.*, 45 I. C. C., 356; *Huron Milling Co. v. P. M. R. R. Co.*, 49 I. C. C., 558; *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512; *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537; and *Sharon Steel Hoop Co. v. Pa. Co.*, 51 I. C. C., 545.

Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

EASTMAN, *Commissioner*, concurring:

The situation here differs from that which was considered in *National Tube Co. v. L. T. R. R. Co.*, 55 I. C. C., 469, 56 I. C. C., 272, since the La Salle & Bureau County Railroad, unlike the Lake Terminal Railroad, performs, in my judgment, what is clearly common-carrier service between the junctions with its trunk line connections and the plant area of the controlling industry, although I am by no means clear that the entire service which it performs for the controlling industry is common-carrier service.

No. 10518.

AMERICAN AGRICULTURAL CHEMICAL COMPANY
v.
HOUSTON & BRAZOS VALLEY RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted July 12, 1919. Decided February 19, 1920.

Rate of 61 cents per 100 pounds collected on carload shipments of sulphur from Bryanmound, Tex., to Bayway, N. J., found illegal to the extent that it exceeded rates of 50 and 50.5 cents. Rates legally applicable not found to have been unreasonable. Refund of overcharges directed and complaint dismissed.

E. B. Leiby and A. J. Whitman for complainant.

R. V. Fletcher, A. H. Elder, and J. W. Terry for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of fertilizers and chemicals at Bayway, N. J., by complaint filed March 13, 1919, seeks reparation on 15 carloads of sulphur shipped to Bayway from Bryanmound, Tex., during the period from March 29, 1918, to May 18, 1918, alleging that the 61-cent rate assessed was unreasonable in violation of section 1 by the amount that it exceeded a rate of 47 cents contemporaneously in effect from Bryanmound to Newark, N. J. Rates are stated in cents per 100 pounds.

The shipments moved over the defendants' lines via four different routes and transportation charges in the sum of \$7,972.21 were collected, based upon a rate of 61 cents and an aggregate weight of 1,306,920 pounds. No joint rates applied and the 61-cent rate assessed was the combination on East St. Louis. Four of the shipments aggregating 352,200 pounds moved via Baton Rouge, La. The combination on that point was 50 cents, and there is an admitted overcharge of \$387.42 on these shipments. A joint rate of 47 cents was contemporaneously in effect from Bryanmound to Newark and the rate applicable from Newark to Bayway was 3.5 cents, making a combination of 50.5 cents, which complainant contends was the rate legally applicable under rule 5 (b) of Tariff Circular 18-A. Bayway is on a branch line of the Central Railroad of New Jersey,

1.9 miles from its junction with the main line at Elizabethport, N. J., which is also the junction of the main line with another branch extending 7.2 miles to Newark.

Defendants challenge the application of rule 5 (b) on the ground that this provision was not published in the rate tariffs and applies only to proportional rates published to basing points.

Rule 5 (b) is one of tariff interpretation. It may be published in the tariff, but its terms must be observed in interpreting or applying all tariffs whether or not it is so published. Its application is not limited to proportional rates. The rate legally applicable on these 11 shipments via East St. Louis was the Newark combination of 50.5 cents. They weighed 954,720 pounds and there is accordingly an overcharge of 10.5 cents per 100 pounds aggregating \$1,002.45.

Complainant shows that Bayway, Newark, Lake Junction, and Hopatcong, N. J., on long hauls ordinarily take the rate to New York City, and that defendants applied a rate of 47 cents from Bryanmount to Newark, Lake Junction, and Hopatcong contemporaneously with the 61-cent rate assailed. It further appears that from Sulphur Mine, La., a rate of 44 cents was applied by defendants to Bayway, as well as to Newark, Lake Junction, and Hopatcong, and complainant states that sulphur rates from Bryanmount to this and other territory are constructed by the addition of a 3-cent differential to the corresponding Sulphur Mine rate. On June 25, 1918, the Director General of Railroads established from Bryanmount to Bayway, Newark, Lake Junction, and Hopatcong a rate of 59 cents, which is the 47-cent rate increased 25 per cent. This rate is still in effect.

Defendants show that the rate to Newark, Lake Junction, and Hopatcong is a commodity rate lower than the rate generally applying to New York rate points; that the rate assessed was the New York rate; that the sulphur rates are being revised so that the lowest combination of locals will apply; and that the relationship of Bryanmount to Sulphur Mine under the readjustment will thus depend upon the differential applied to the basing point.

In *Du Pont de Nemours & Co. v. H. & B. V. Ry. Co.*, 56 I. C. C., 334, it was shown that the average distance from Bryanmount to Newark is 2,222 miles. The distance to Bayway is 5.3 miles less than to Newark. Using 2,216.7 miles as the average distance from Bryanmount to Bayway the 50.5-cent rate yielded 4.56 mills per ton-mile and 19.8 cents per car-mile, based on the average loading of these shipments, 87,128 pounds.

We do not find that the legally applicable rates were unreasonable. Defendants will be expected to refund promptly the overcharges found to exist. An order will be entered dismissing the complaint.

No. 10781.

C. U. SNYDER & COMPANY

v.

DIRECTOR GENERAL, UNION PACIFIC RAILROAD
COMPANY, ET AL.

Submitted January 2, 1920. Decided February 17, 1920.

Rate applicable on refuse molasses, in tank-car loads, from Sugar City and Blackfoot, Idaho, to Pine Bluff, Ark., found to have been unreasonable. Reparation awarded.

C. R. Hillyer for complainant.*C. A. Magaw* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

Complainant, a corporation engaged in the mixed-feed business at Pine Bluff, Ark., alleges by amended complaint seasonably filed that the rate charged for the transportation of five tank-carload shipments of refuse molasses from Sugar City and Blackfoot, Idaho, to Pine Bluff, during July and August, 1917, was unreasonable and unduly prejudicial. It asks for an award of reparation and the establishment of reasonable and nondiscriminatory rates. Throughout this report rates are stated in cents per 100 pounds.

The refuse molasses shipped was a by-product of beet sugar and of low value. The shipments moved over the Oregon Short Line, Union Pacific, and Missouri Pacific railroads, and charges thereon were collected at a combination rate of 60 cents, composed of a commodity rate of 41 cents to Memphis, Tenn., and 19 cents beyond. Authority for the 19-cent factor does not appear. A class C rate of 18 cents was applicable from Memphis to Pine Bluff and the shipments were therefore overcharged 1 cent per 100 pounds. Complainant contends that the rate of 41 cents to Memphis also applied to Memphis rate points, ^{the} ~~line~~ ^{to} Pine Bluff, but an examination of the tariffs shows that ~~on~~ ^{the} ~~line~~ ^{to} of movement this rate was restricted to Memphis.

Prior to January 30, 1915, defendants maintained a rate of 41 cents from Sugar City, Blackfoot, and other Idaho and Utah sugar-producing points to Memphis and related points, including Pine Bluff. Effective on that date in connection with the elimination of Idaho points generally from the reissued Trans-Missouri-Utah tariff, the rates from the sugar-producing points in that state to Memphis territory were canceled, through oversight it is said, as it was not the carriers' intention to withdraw through commodity rates on this traffic. Upon their attention being later called to this situation the 41-cent rate was reestablished on May 15, 1915, from Idaho points to Memphis, but, through another inadvertence, no provision was made for extending this rate to other points in the Memphis group. Defendants are under the burden of justifying the increased rates resulting from these changes.

At the time the shipments moved, a commodity rate of 41 cents was applicable on refuse molasses to Pine Bluff from Layton and other Utah points located in the same general territory of production as the Idaho points in question. From all of these points of origin rates to Mississippi River territory have usually been the same, on other commodities as well as on this.

Since June 25, 1918, the rate to Memphis has been 51.5 cents, that being the 41-cent rate as increased by 25 per cent under General Order No. 28. The percentage of increase is not assailed. Complainant is primarily interested in obtaining a rate to Pine Bluff not in excess of that contemporaneously maintained to Memphis. Defendants concede the propriety of this relationship, and after the proposed report was served established, on December 31, 1919, a rate of 51.5 cents from Sugar City and Blackfoot to Pine Bluff, which is still in effect. They express willingness to make reparation.

There is nothing in the record to justify a finding of undue prejudice, but we do find that the rate legally applicable to the shipments in question was unreasonable to the extent that it exceeded 41 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the freight charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare and submit to defendants for verification a statement showing details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No order for the future is necessary.

No. 10437.

UNITED VERDE EXTENSION MINING COMPANY
v.
DIRECTOR GENERAL, SOUTHERN PACIFIC COMPANY,
ET AL.

Submitted May 12, 1919. Decided February 16, 1920.

Rate of 69.5 cents per 100 pounds on hay, in carloads, from Grape, Calif., to Clarkdale, Ariz., found to have been unreasonable to the extent that it exceeded 52 cents. Reasonable maximum rate prescribed. Reparation awarded.

E. H. B. Avery for complainant.

J. C. Forest for Director General of Railroads.

L. H. Chalmers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in mining and smelting copper ore at Clarkdale, Ariz., by complaint seasonably filed as amended, alleges that unreasonable charges were collected for the transportation in April and May, 1917, of four carload shipments of hay from Grape, Calif., to Clarkdale. An award of reparation and the establishment of a reasonable rate for the future are asked. Rates will be stated in cents per 100 pounds.

The Verde valley, in which Clarkdale is located, does not produce sufficient hay to supply the local requirements, and is ordinarily dependent in a degree on the Salt River valley, which is near Phoenix, Ariz. In 1917 there was a shortage of hay in the latter valley, the greater part of the crop being shipped out for military purposes. It therefore became necessary for the complainant to look elsewhere for a portion of its supply, and through an agent these four cars were purchased at Grape, which is in the Imperial valley on a branch of the Southern Pacific 23 miles south from Niland, Calif., junction of that branch with the main line.

The shipments weighed 96,700 pounds, and moved over the Southern Pacific to Colton, Calif., a distance of 151 miles, and thence over
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the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, a total distance of 640 miles. In the absence of a joint through rate charges were properly collected in the sum of \$672.07, at a combination aggregating 69.5 cents, made up of 17.5 cents from Grape to Colton, and 40 cents Colton to Cedar Glade, Ariz., both commodity rates, and the class C rate of 12 cents, Cedar Glade to Clarkdale. Clarkdale is at the terminus of a branch line 38 miles from Cedar Glade. Colton is intermediate between Los Angeles and Phoenix, and approximately 67 miles from Los Angeles via a slightly indirect route of the Santa Fe. The present rate from Grape to Clarkdale is 87 cents, the factors above named having been increased 25 per cent pursuant to General Order No. 28 of the Director General of Railroads. The record disclosed that no other shipments have ever been made to Clarkdale from the vicinity of Grape.

Effective November 28, 1908, the Southern Pacific published a rate of 17.5 cents from Grape and certain main-line points, including Niland, to Los Angeles and Colton. In 1912 the railroad commission of California fixed a rate of 15 cents from the main-line points to those destinations, and the Southern Pacific applied that rate also to interstate traffic, but continued the 17.5-cent rate from Grape. The 40-cent component referred to above applies from Los Angeles to Phoenix and other points on the Santa Fe, including Cedar Glade, an intermediate point.

Complainant cites rates on hay, in carloads, in effect prior to June 25, 1918, from Clarkdale to San Jacinto, Calif., 530 miles, 32.5 cents; to Long Beach, Calif., 574 miles, 30 cents; to San Diego, Calif., 677 miles, 37.5 cents; and from Buckeye, Ariz., to Colton, 421 miles, 30 cents. The rate legally applicable from Clarkdale to Long Beach was 34 cents. What movement, if any, now takes place under these rates is not shown.

Defendants urge that the rates cited are subnormal, reflect an attempt some years ago to find a market for a surplus of hay from Arizona, and were made in competition with a water-influenced rate of 25 cents from San Francisco to Los Angeles. They express willingness to make reparation to the basis of 52 cents and to establish a rate of 65 cents representing the increase of 25 per cent under General Order No. 28. The basis of 52 cents equals the aggregate of the intermediate rates from Los Angeles to Clarkdale, 40 cents to Cedar Glade, and 12 cents beyond, a distance of 552 miles over the Santa Fe, in effect when the shipments moved.

Under the impression that a rate of 63 cents was in effect from Grape to Clarkdale by way of defendants' lines through Maricopa and Phoenix, Ariz., a distance of 498 miles, defendants admitted at the hearing that the shipments were misrouted by the initial carrier.

Examination of the tariffs on file shows that the rate contemporaneously applicable over the latter route was 76 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 52 cents per 100 pounds and that the present rate on hay, in carloads, from Grape to Clarkdale, is and for the future will be unreasonable to the extent that it exceeds or may exceed 65 cents per 100 pounds. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$169.23, with interest.

An appropriate order will be entered.

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No. 10839.

LOS ANGELES FOUNDRY COMPANY

v.

DIRECTOR GENERAL, ARIZONA & NEW MEXICO
RAILWAY COMPANY, ET AL.

Submitted May 15, 1919. Decided February 19, 1920.

Rates on grinding balls from Los Angeles, Calif., to various interstate destinations found to be unduly prejudicial to complainant at Los Angeles and unduly preferential of its competitors at eastern points. Defendants required to remove the undue prejudice.

Kuster & Salisbury and *Stannard A. McNeil* for complainant.
Elmer Westlake, E. W. Camp, and G. H. Baker for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

By complaint filed November 20, 1918, the complainant, a corporation engaged in manufacturing iron grinding balls at Los Angeles, Calif., alleges that the rates on grinding balls from Los Angeles to various interstate destinations are unreasonable, unduly prejudicial to Los Angeles, and unduly preferential of Chicago, Ill., and other eastern points of origin. We are asked to prescribe reasonable and nonprejudicial rates. Rates will be stated in amounts per 100 pounds.

Iron and steel grinding balls are from seven-eighths of an inch to 4½ inches in diameter and are cast or rough forged from alloyed scrap iron or steel. They are used extensively in grinding copper, gold, silver, zinc, lead, and other crude ores, and also in cement mills. Rock pebbles measuring from 2½ to 7 inches in diameter are also used to grind ore, the mechanism being somewhat different from that used with grinding balls, and their use is diminishing as new machinery is installed. The selling price of steel balls is approximately twice that of iron balls. The latter cost about four times as much as pebbles, but last longer. Iron balls easily load 80,000 pounds per car. Complainant's carload shipments average about one per week.

During the last few years complainant's interstate shipments moved chiefly to points in Arizona and Utah, although some were made to Burke, Idaho, Hurley, N. Mex., and El Paso, Tex. Miami, Ariz., apparently takes more grinding balls than any other destination mentioned, an average of about 750 tons per month. Complainant's principal competition is with shippers of steel balls from Chrome, N. J., and of iron balls from Chicago, Columbus, Ohio,

Maumee, Pa., and St. Louis, Mo. It also competes with shippers of pebbles and balls moving from other points of origin. Commodity rates generally apply on balls from eastern points, and, as they are interrelated, those from Chicago may be considered representative. Commodity rates are likewise accorded to pebbles; but on complainant's commodity from Los Angeles fifth-class rates apply, except to certain important consuming points hereinafter mentioned, which take rates lower than fifth class.

The following table taken from complainant's exhibits compares the rates on grinding balls from Los Angeles with those from New York, N. Y., and Chicago to representative destinations:

FROM NEW YORK.

To—	Rate.	Minimum weight.	Distance.	Revenue.	
				Per car.	Per car-mile.
	<i>Cents.</i>	<i>Pounds.</i>	<i>Miles.</i>		<i>Cents.</i>
Clifton, Ariz.....	75	80,000	2,428	\$600.00	24.71
Morenci, Ariz.....	75	80,000	2,435	600.00	24.64
Miami, Ariz.....	76.5	80,000	2,641	612.00	23.17
Hayden, Ariz.....	81.5	80,000	2,823	653.00	23.10
Cobre, Nev.....	62.5	80,000	2,543	500.00	19.66
Shafter, Nev.....	62.5	80,000	2,561	500.00	19.62
Garfield, Utah.....	62.5	80,000	2,457	500.00	20.35

FROM CHICAGO.¹

Hurley, N. Mex.....	62.5	80,000	1,562	\$500.00	31.41
Anaconda, Mont.....	62.5	80,000	1,552	500.00	32.21
Black Eagle, Mont.....	62.5	80,000	1,506	500.00	33.15
Butte, Mont.....	62.5	80,000	1,526	500.00	32.76
Wallace, Idaho.....	81.5	80,000	1,741	652.00	37.45
Irvin, Wash.....	81.5	80,000	1,855	652.00	36.14

FROM LOS ANGELES.

Clifton, Ariz.....	75	80,000	796	600.00	81.52
Morenci, Ariz.....	75	80,000	743	600.00	80.78
Miami, Ariz.....	76.5	80,000	751	612.00	81.49
Hayden, Ariz.....	76.5	80,000	830	612.00	115.47
Cobre, Nev.....	1.31	80,000	1,114	1,048.00	94.08
	(²)	36,000			
	* 1.165	80,000			
Shafter, Nev.....	* 1.29	50,000	951	932.00	98.00
	* .97	80,000			
	* 1.095	50,000	1,123	776.00	69.1
	* 1.165	80,000			
	* 1.29	50,000	989	962.00	99.25
Garfield, Utah.....	.625	80,000	769	500.00	65.02
	75	50,000			
Hurley, N. Mex.....	1.06	80,000	1,115	900.00	71.75
	1.215	80,000	766	972.00	126.89
Anaconda, Mont.....	1.315	36,000	1,222	1,062.00	86.08
	1.64	80,000			
Black Eagle, Mont.....	(³)	36,000	1,385	1,312.00	94.73
	(⁴)	80,000			
Butte, Mont.....	1.315	36,000	1,210	1,062.00	86.94
	1.31	80,000			
Wallace, Idaho.....	(⁵)	36,000	1,571	1,048.00	66.71
	1.235	80,000			
Irvin, Wash.....	(⁶)	36,000	1,502	988.00	65.77

¹ Rates from Columbus, Ohio, to destinations shown based on Chicago. Rate from Columbus to Chicago, 23 cents, minimum 36,000 pounds.

² 80,000-pound minimum used for comparative purposes, 36,000 is tariff minimum.

³ Combination rate based on Salt Lake City, Utah.

⁴ Combination rate based on Deming, N. Mex., via Southern Pacific and Santa Fe, 80,000-pound minimum to Deming and 36,000 pounds beyond. 80,000-pound minimum used for comparative purposes.

⁵ Combination rate based on San Francisco, Calif.

⁶ Combination rate based on Helena, Mont.

⁷ Combination rate based on Portland, Oreg.

⁸ Combination rate based on Portland, Oreg., and Spokane, Wash.

Complainant cites a rate of 62.5 cents on pebbles from Encinitas, Calif., and other points of origin to destinations throughout the west, including points in Idaho, Montana, Nevada, and as far east as Iowa; also rates from the Pacific coast to groups D to J, inclusive, as shown in Countiss' tariff I. C. C. No. 1038, on dried beans, bags and bagging, borate rock, canned goods, oats, wooden pails and tubs, junk, petroleum, syrup, and other commodities, all of which are substantially lower than the rates applicable to grinding balls. Complainant points out that the rate on grinding balls from Chicago to Miami, 1,796 miles, is 76.5 cents, the same as the rate from Los Angeles for 751 miles; that to destinations in intermountain territory shipments from Chicago must cross mountains on the east thereof, as shipments from Los Angeles must cross mountains on the west; and that the highest point between Los Angeles and Chicago is east of Miami. Complainant asserts that shipments have been made from Chicago to destinations as far west as San Francisco and Riverside, Calif., in competition with its shipments.

A basis of adjustment was submitted by complainant, covering the territory from Los Angeles to numerous points west of eastbound transcontinental group J, and to eastbound transcontinental groups D to J, inclusive. Rates are proposed to points within a radius of 1,000 miles of Los Angeles and beyond in the intermountain and north Pacific coast territories which would respectively yield car-mile earnings 50 per cent and 25 per cent higher than the average revenue from Chicago for like distances. The rate on this traffic from group D to Los Angeles is \$1.19, which, complainant contends, is a reasonable rate to apply eastbound from Los Angeles to group D. To points in groups E to J, inclusive, it proposes rates from Los Angeles which are each 80 per cent of that to the next farther distant group. Complainant states, however, that it will be satisfied with either a reduction in its own rates or an increase in the rates from Chicago and the other eastern competing points.

For defendants it is said that the interruption of steamship service shortly after the outbreak of the European war prevented Miami from obtaining pebbles from Europe as theretofore and that in order to encourage metal production they established from New York piers the same rate, 61.25 cents, on grinding balls as on pebbles. This rate was afterwards increased to 76.5 cents under General Order No. 28 of the Director General of Railroads. It was applicable via water to Galveston and rail beyond and was lower than the rate on castings and other iron and steel articles. Similar rates were published to other Arizona points and later were made applicable all rail from group D points, including Chicago, and west. The rates from Chrome are 10.5 cents higher than from New York piers.

The defendants point out that the commodities used by complainant in its comparisons are for the most part products of the soil moving in great volume from California at rates influenced both by water competition and by competition with local points of production; that machinery is rated fifth class or class A in the west; and that the class rates, especially those to Utah, Arizona, and New Mexico, are reasonable and were established following our decisions. They cited rates on grinding balls substantially lower than fifth class from Los Angeles to Ajo, Hayden, Miami, Clifton, and Morenci, Ariz., Goldfield, Winnemucca, and McGill, Nev., Hurley, N. Mex., and Garfield, Utah, but urge that there is no justification for commodity rates on grinding balls from Los Angeles.

Defendants show rates to Arizona points which are higher from Chicago than from Los Angeles, but the disparity in distance makes such comparisons of doubtful value. They contend that rates generally are lower from the east than from the west because of greater empty-car movement, greater traffic density, longer hauls and more active competition between carriers; that there is a steady flow of traffic from Chicago to points in Montana; that the haul from Los Angeles to Montana is across the traffic lanes; that the distance from Los Angeles to points in Washington is nearly as great as from Chicago and the transportation more difficult; and that the rates from Chicago to Arizona are influenced by water rates to Galveston and intrastate rates to El Paso.

The prayer for relief seeks the establishment of rates from Los Angeles to all points on the lines of the principal carriers in official and western classification territories. From the evidence it would appear that the destinations in which complainant is most interested lie west of the continental divide.

It is clear that the rates applied from Los Angeles on this traffic are out of line with those from Chicago and points east. Manifestly there is no justification for charging as much, or more, from Los Angeles to the southern Arizona, Nevada, Utah, and New Mexico points named, for distances ranging from 530 to 951 miles via the short lines, as from New York or Chicago. But there is no substantial evidence in this record to warrant the fixing of rates from Los Angeles on the basis proposed by complainant, or to indicate what other basis would be reasonable. Defendants admit on brief that the rate adjustment as a whole results in undue prejudice to complainant, and ask opportunity to work out a satisfactory basis in connection with the general readjustment of transcontinental rates now in progress. Complainant has been seeking relief from the carriers since August, 1916.

The record before us does not justify a finding of unreasonableness in excess of specific amounts, but we do find that the rates assailed are and for the future will be unduly prejudicial to complainant at Los Angeles and unduly preferential of its eastern competitors. The defendants will be expected to readjust their rates on this traffic from Los Angeles to all points to which complainant is likely to ship so as to remove the undue prejudice found to exist within 90 days from the date of service of this report and seasonably to bring to our attention the method of readjustment proposed. This proceeding will be held open for such further action as may become appropriate.

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No. 10078.¹

BEAUMONT CHAMBER OF COMMERCE ET AL.

v.

ALABAMA & VICKSBURG RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted June 12, 1919. Decided February 21, 1920.

All-rail rates on clean rice, in carloads, from Beaumont, Orange, Galveston, and Houston, Tex., to eastern seaboard territory not found unreasonable, but found unduly prejudicial. A nonprejudicial adjustment prescribed.

Chas. A. Bland for Beaumont Chamber of Commerce and others.
H. S. L'Hommedieu for Orange Board of Trade and others; and
J. A. Morgan and *F. A. Leffingwell* for Chamber of Commerce, Houston, Tex.

Baker, Botts, Parker & Garwood, E. H. Thornton, G. L. Koehler, W. M. Hough, William Burger, and *G. B. Wood* for defendants.

A. Pace for Lake Charles Rice Milling Company; and *F. A. Lallier* for Galveston Commercial Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

The complaint in No. 10078, filed February 25, 1918, is brought by the Beaumont Chamber of Commerce and Orange Board of Trade and various rice-milling companies doing business at Beaumont and Orange, Tex. The complaint in No. 10143, filed April 9, 1918, is brought by the Chamber of Commerce of Houston, Tex., in the interest of various rice-milling companies doing business at that point. Both complaints allege that the all-rail rates on clean rice, in carloads, from Beaumont, Orange, and Houston to points in the territory east of the Buffalo-Pittsburgh line and north of the Potomac River are unjust and unreasonable in comparison with the rates on like traffic from New Orleans, La., to the same destinations, in violation of the act to regulate commerce. Undue prejudice in violation of section 3 of the act is specifically alleged in the original complaint in the second case, while the first complaint was amended specifically to cover the intensified discrimination on account of the

¹ This report also embraces No. 10143, Chamber of Commerce, Houston, Tex., *v.* Alabama & Vicksburg Railway Company, Director General, et al.

increased rates established on June 25, 1918, under authority of General Order No. 28 of the Director General of Railroads.

The complaint in No. 10078 was first heard in May, 1918; and, as amended, was heard jointly with No. 10143 in January, 1919. The evidence to a great extent relates to the alleged undue preference of New Orleans and the undue disadvantage of the complaining cities in rates to the destination territory above described. Reparation was asked in the first case on shipments that moved after January 1, 1918, but was abandoned at the second hearing. In both cases the Director General of Railroads, by supplemental complaints, was made a party defendant. The Galveston Commercial Association, of Galveston, Tex., intervened, seeking the continuance of Galveston's rate parity with Houston. The Lake Charles Rice Milling Company, of Lake Charles, La., also intervened, opposing any change in the existing rate relationship. All rates herein are stated in cents per 100 pounds.

Beaumont, Orange, Galveston, and Houston, hereinafter called the group, are, and long have been, blanketed with respect to all-rail rates on clean rice to New Orleans and to various destination territories including eastern seaboard territory. Via Galveston to eastern seaboard territory rates from Beaumont and Orange, rail and water, are differentially higher than those from Houston. *Transportation of Rice and Rice Products*, 21 I. C. C., 124.

To eastern seaboard territory the general basis for constructing all-rail rates from the group, as well as from Texas points generally, is by combination on Mississippi River crossings, a fact which defendants substantiate with a list of some 30 commodities which moved to New York, the rates on which were made by combination on New Orleans, Memphis, Tenn., or St. Louis, Mo. The two notable exceptions are lumber and sulphur. To central freight association territory, also, rates from Texas in general are combination rates although, contrary to the general rule, the rice rates are specific joint through rates, a fact to which complainants point as ground for the establishment of joint rates to eastern seaboard territory.

The original complaints do not seek the establishment of through routes and joint rates in lieu of the combination rates, but on hearing amendment to this effect was permitted with the consent of the defendants. Complainants, however, are mainly interested in the amount of the rate, not the manner of its publication.

In *Rice from Texas and Louisiana*, 43 I. C. C., 29, we sustained a rate of 20 cents on clean rice, carloads, from the group to New Orleans, and in *Orange Rice Mill Co. v. T. & N. O. R. R. Co.*, 49 I. C. C., 250, this conclusion was affirmed. In *Beaumont Chamber of Commerce v. Director General*, 55 I. C. C., 428, decided October 24, 1919,

the rate of 25 cents from Beaumont to New Orleans was not found unreasonable.

Prior to June 25, 1918, when General Order No. 28 became effective, some of the through all-rail rates from the group to eastern seaboard territory were made by combination on New Orleans, using the 20-cent rate to that point, but the greater number were made by combination on Memphis, using a 25-cent rate to that point. The average of the through rates to practically all of the principal consuming points in eastern seaboard territory was 16.5 cents higher than the rates from New Orleans. The rate from the group to New Orleans is now 25 cents and that to Memphis 31.5 cents. The present through rates to eastern seaboard territory generally make on New Orleans and at the time of the last hearing averaged 24.9 cents higher than the rates from New Orleans. The following table is illustrative:

To—	Rates June 24, 1918.			Rates Jan. 20, 1919.		
	From group.	From New Orleans.	Difference in favor of New Orleans.	From group.	From New Orleans.	Difference in favor of New Orleans.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Albany, N. Y.	59.6	45	14.6	69	44	25
Baltimore, Md.	57.8	40	17.8	69	44	25
Bangor, Me.	62.8	47	15.8	75	50	25
Binghamton, N. Y.	55.9	38	17.9	69	44	25
Boston, Mass.	62.8	47	15.8	75	50	25
Concord, N. H.	62.8	47	15.8	75	50	25
Eastport, Me.	71.8	56	15.8	86.5	61.5	25
Harrisburg, Pa.	57.8	40	17.8	69	44	25
Hartford, Conn.	62.8	47	15.8	75	50	25
Montpelier, Vt.	62.8	47	15.8	75	50	25
Montreal, Quebec	67	47	20	75	50	25
New York, N. Y.	60.8	45	15.8	69	44	25
Ogdensburg, N. Y.	62.8	47	15.8	75	50	25
Philadelphia, Pa.	58.8	41	17.8	69	44	25
Portland, Me.	62.8	47	15.8	75	50	25
Providence, R. I.	62.8	47	15.8	75	50	25
Rochester, N. Y.	53.4	38	15.4	67	44	23
Rockland, Me.	62.8	47	15.8	75	50	25
Springfield, Mass.	62.8	47	15.8	75	50	25
Toronto, Ontario.	62	42	20	70.5	51.5	25
Utica, N. Y.	58	38	20	69	44	25
Washington, D. C.	57.8	40	17.8	69	44	25
Watertown, N. Y.	60.8	45	15.8	69	44	25
Wilkes-Barre, Pa.	58.8	41	17.8	69	44	25
Williamsport, Pa.	57.8	40	17.8	69	44	25
Worcester, Mass.	62.8	47	15.8	75	50	25

While vessels plied from Galveston to the eastern seaboard the movement of rice from the group to eastern seaboard territory was by rail and water through Galveston, and there was no demand for through all-rail service; but the shortage of ocean tonnage and the frequent embargoes against the Galveston route, largely occasioned by the war, made it necessary to obtain other routes for the movement of this traffic. Defendants view such conditions as temporary, and argue that as complainants admittedly will use, when open, the

lower-rated route through Galveston, there is no necessity for all-rail rates even if established on the basis asked. Manifestly complainants are entitled to fair and reasonable rates, all-rail, even if seldom used.

In *Rice from Texas and Louisiana*, 40 I. C. C., 285, we said:

New Orleans early became the leading market and milling point for rough rice and thus pivotal in the rate structure applied to clean rice. * * * and:

Rates from producing points in Texas, Louisiana, and Arkansas to most points are differentially related to those from New Orleans.

The millers and shippers of rice at New Orleans are alleged to be the principal competitors of complainants, and New Orleans is said to fix the market prices, so that complainants, selling at the market, aver that they must absorb the difference between the rates from New Orleans and those from the group, whatever the gateway of movement. Complainants do not ask for the application of the same rates from the group as apply from New Orleans, but claim that their rates should not exceed the New Orleans rates by more than 10 cents, which, prior to June 25, 1918, was the difference between rates from the group and rates from New Orleans to points in central freight association territory east of the Indiana-Illinois line. In other words, it is contended that the differential of 10 cents should be extended eastward to include trunk line and New England territories.

Differentials in the rates from Texas of 10 cents higher than the rates from New Orleans to central freight association territory east of the Indiana-Illinois line and 5 cents to Illinois points appear to have been voluntarily established by the carriers. The relationship was attacked in *Mutual Rice Trade & Devel. Asso., Houston v. I. & G. N. R. R.*, 23 I. C. C., 219, as unreasonable and discriminatory, but we dismissed the complaint, saying:

A careful examination of the relative rates applying to Illinois and to central freight association territory does not disclose that the rates from Texas points to these territories are discriminatory. New Orleans enjoys natural advantages entitling it to better rates to these points, and we can not conclude from this record that the existing carload differentials in favor of New Orleans of 5 cents to Illinois and 10 cents to central freight association territory make an undue allowance for this difference. New Orleans is on the average about 150 miles nearer to Illinois points and about 200 miles nearer to central freight association points than are the Texas milling centers. We therefore find no warrant in the present record for disturbing these rates.

Under General Order No. 28 these differentials were increased to 12.5 cents and 6 cents, respectively. Defendants contend that the differentials should be greater, as the necessity for building up a new industry, which influenced the original adjustment, no longer exists.

The average short-line all-rail distance from the group to Baltimore, Philadelphia, New York, and Boston, the principal points in eastern seaboard territory, is about 285 miles greater than from New Orleans.

Under the adjustment made June 25, 1918, rates from New Orleans were reduced in several instances, due to observation of the rule incorporated in General Order No. 28 that in applying the increases prescribed the increased class rates applicable to like commodity descriptions and minimum weights between the same points were not to be exceeded. For example: To New York and Albany the former commodity rate from New Orleans was 45 cents, superseded June 25, 1918, by the increased sixth-class rate of 44 cents; also, as previously shown, the average rate advantage to New Orleans is increased. Complainants do not object to the measure of the increases effected under General Order No. 28, but do protest against the augmented differences in favor of New Orleans. Effective December 15, 1919, increased commodity rates became operative from New Orleans to destinations in eastern seaboard territory.

To a selected number of representative points in eastern seaboard territory the average ton-mile earnings on clean rice, carloads, at the rates in effect at the last hearing, were: From New Orleans, 6.77 mills; from Houston and Beaumont, 8.69 mills. Under the increased rates effective from New Orleans December 15, 1919, the ton-mile earnings New Orleans to New York are 8.4 mills, as against 10 mills from Beaumont to New York. From New Orleans to Memphis, 396 miles, at a rate of 19 cents, the yield per ton-mile is 9.59 mills; while from New Orleans to several Ohio River points, St. Louis, Chicago points, Dubuque, Iowa, and Nashville, Tenn., the earnings average per ton-mile 9.97 mills. To six representative points in the southeast from Houston and Beaumont the average ton-mile earnings are 12.39 mills.

The record contains much matter submitted by both parties bearing upon commercial conditions. Much was also said of the relative situation of complainants and their New Orleans competitors with respect to their supplies of rough rice and the rates thereon, but the inbound rates are not here in issue. Moreover, in *Southern Rice Growers Asso. v. T. & N. O. R. R. Co.*, 53 I. C. C., 197, we reaffirmed our finding in 43 I. C. C., 90, and ordered reestablished milling-in-transit arrangements on rice and rice products from all producing points in Texas and in Louisiana west of the Mississippi River to interstate destinations, on the basis of the clean-rice rates from producing points through milling points in Texas and Louisiana to final destinations, with an added transit charge of 2 cents.

DANIELS, *Commissioner*:

The preceding embodies the substance of the report proposed by the examiner who recommended a finding that the rates assailed have not been shown to be unreasonable or unduly prejudicial, and that the complaint be dismissed.

Exceptions have been filed by the complainants, alleging error in the proposed finding adverse to the establishment of joint through rates; in the proposed finding that complainants are primarily actuated by commercial conditions in seeking the rate adjustment prayed for; in the proposed finding that the rate factors east of the Mississippi River are not shown to be other than fair and reasonable; and in the general conclusion that the rates assailed are not unreasonable or unduly prejudicial.

The record has been carefully canvassed in connection with the exceptions recited above.

All-rail rates will be used only or mainly when the water route via Galveston is closed. We are of opinion that the publication of tariffs carrying joint rates which will be used only under rare or exceptional circumstances should not be required, particularly as the combination rates via the routes over which specific joint through rates are sought are readily available to the complainants.

It is immaterial what primarily actuated complainants in their demand for an adjustment of rates 10 cents over the New Orleans rates to the destinations here in issue. They are entitled to reasonable and nonprejudicial rates.

As to the fairness and reasonableness of the factors east of the Mississippi River, it may be said, first, that, as section 10 of the federal control act is impliedly involved, and as the requirements of that section go to the reasonableness and justness of rates both absolutely and relatively, it is necessary to consider how the factors east of the Mississippi affected the complaining cities and New Orleans in their respective rates to eastern seaboard destinations. Prior to General Order No. 28 the commodity rate on clean rice from New Orleans to New York, all rail, was 45 cents. As the result of General Order No. 28, as explained in the report, this rate was reduced to 44 cents. Inasmuch as the factor west of the river was increased from 20 to 25 cents, the immediate outcome of the rates resulting from General Order No. 28 was that the New Orleans rate to New York, all rail, was reduced both absolutely and relatively to the rates from the group of complaining cities. The spread which, in this instance, had been 15.8 cents, became 25 cents. Beaumont paid 8.2 cents more and New Orleans 1 cent less to New York. The subsequent increase in the New Orleans rate, from 44 cents to 56.5 cents to New York, for example, is confirmatory of the view that the 44-

cent rate was out of alignment and improperly preferential of New Orleans. Have the increased rates from New Orleans eliminated the prejudicial relationship?

Rates at present effective from New Orleans and from Beaumont, respectively, illustrative of the existing situation, are as follows:

To—	From New Orleans.	From Beaumont.
New York, N. Y.	12 56½	28½
Philadelphia, Pa.	12 51½	27½
Baltimore, Md.	12 50	27
Boston, Mass.	12 59	28
Buffalo, N. Y.	12 46½	25
Pittsburgh, Pa.	12 46½	25

¹ Minimum weight, 40,000 pounds.

² Effective Dec. 15, 1919; sup. 4 Emerson's I. C. C. 51.

³ New Orleans combination; minimum weight, 30,000 pounds—25 cents to New Orleans. Leland's I. C. C. 1301; sup. 4 to Emerson's I. C. C. 51.

It will be noted that the common difference to the four destinations in the territory of destination is 25 cents, which is the factor west of the river, all rail, from the complainants' mills to New Orleans. To Buffalo and to Pittsburgh the difference is 12.5 cents.

We do not feel that the higher per-ton-mile earnings from the complaining cities is necessarily indicative of undue prejudice against them. The haul west of the river is in higher-rated territory than east of the river. The respective ton-mile earnings, Beaumont and New Orleans to New York, are 10 mills and 8.4 mills. The respective distances are, from Beaumont via New Orleans, 1,620 miles; from New Orleans, 1,342 miles. The general rule is, of course, that ton-mile yields should be less for longer than for shorter distances. Of the 1,620 miles from Beaumont to New York less than 300 are west of the river. This is slightly less than 20 per cent of the total distance whereas the factor west of the river is over 30 per cent of the through rate. It is true that we have specifically approved of the 20-cent rate and of the 20-cent rate increased to 25 cents under General Order No. 28, as a local rate from the complaining group to New Orleans. It is true also that commodity rates generally from this territory, all rail, to the territory of destinations make on combination on the Mississippi River crossings. We can not, however, avoid the conclusion that on this traffic, all rail, from the points of origin to eastern seaboard territory the proportional factor should be at least 5 cents less than the local rate in order to eliminate an unduly preferential advantage which otherwise redounds to the benefit of New Orleans. It is noteworthy that on this same traffic to the Pacific coast the New Orleans rates exceed those from the complaining group by only 5 cents per 100 pounds.

Upon this record we do not find that the charges assailed are intrinsically unreasonable, but we conclude and find that they are and for the future will be unduly prejudicial to Beaumont, Orange, Galveston, and Houston to the extent that they exceed or may exceed those that would accrue at a rate of 20 cents per 100 pounds in excess of those applicable at the carload rates and minimum weights contemporaneously maintained by defendants on like traffic, all rail, from New Orleans to the same destinations.

An appropriate order will be entered.

57 I. C. C.

No. 10327.

KANSAS CITY REFINING COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted November 24, 1919. Decided February 17, 1920.

Rates on refined and fuel oil to Chicago, Ill., from Kansas City, Mo., and Kansas City, Kans., found unreasonable and unduly prejudicial to the extent that the rate on fuel oil from Kansas City to Chicago exceeds a rate at least 5 cents lower than the rate contemporaneously maintained on refined oil between the same points, and to the extent that rates on fuel oil, local or proportional, from Kansas City to Chicago exceed rates at least 3 cents lower than rates contemporaneously maintained on the same commodity from the midcontinent field to Chicago.

Clifford Thorne and Walter R. Scott for complainants.

F. E. Andrews and T. J. Norton for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner*:

This report follows in substance the report proposed by the examiner. Exceptions to the examiner's proposed conclusions, filed by the defendants, were the subject of oral argument before us.

The Kansas City Refining Company and the Evans-Thwing Refining Company, complainants herein, are corporations engaged at Kansas City, Kans., and Kansas City, Mo., respectively, in refining crude petroleum oil. The Riley Brothers Oil Corporation, also a complainant, is selling agent for the Evans-Thwing Company. By complaint, filed November 19, 1918, it is alleged that the local and proportional rates on fuel oil, in carloads, to Chicago from the Kansas City district, hereinafter referred to as Kansas City, are unjust, unreasonable, and unduly prejudicial, both by comparison with the rate on refined oil from and to the same points and with those on fuel oil from refineries in the midcontinent oil field in Kansas and Oklahoma. The establishment of just and reasonable rates for the future is asked. A prayer for reparation was withdrawn subsequent to the hearing. Rates are stated herein in cents per 100 pounds.

Fuel oil, or the commodity referred to on this record as fuel oil, is the residue remaining in the stills after the volatile oils, such as gasoline, naphtha, kerosene, and distillate, have been drawn off. It constitutes in volume about 45 per cent of the crude oil refined and is used extensively for steam purposes. Most of complainants' crude petroleum originates in the midcontinent field and the refined and residual oils are marketed in competition with refineries located in that field and with others near Chicago. Chicago is the largest market for fuel oil, although other markets are found in the manufacturing centers east thereof.

The basis of the complaint is disclosed in the following statement of the rates on refined and fuel oil from Kansas City and the midcontinent field.

To Chicago from—	Miles.	Rates on—		Revenue per ton-mile on fuel oil.	Proportional rate on fuel oil.
		Refined oil.	Fuel oil.		
Kansas City.....	¹ 451	26.5	24.5	<i>Mills.</i> 10.88	22.5
Kansas group.....	² 606	29.5	24.5	8.08	22.5
Oklahoma group.....	³ 704	29.5	24.5	6.96	22.5
Kansas-Oklahoma.....	³ 620	29.5	24.5	7.90	22.5

¹ Via Atchison, Topeka & Santa Fe Railway.

² Average distance as found in *Midcontinent Oil Rates*, 36 I. C. C., 109.

³ Average to points to which Chicago rate applies.

It will be observed that the rate on refined oil from Kansas City is 3 cents lower than that applying on the same commodity from the midcontinent field, whereas on fuel oil the same rate applies from both Kansas City and the midcontinent field. Complainants contend that if in recognition of the shorter haul from Kansas City a difference of 3 cents is proper in the rates on refined oil the same difference should obtain in the adjustment of rates on fuel oil. It will be noted also that the rate on fuel oil from refining points in the midcontinent field is 5 cents lower than the rate on the refined oil, while from Kansas City the difference between the rates on the two classes is only 2 cents. Complainants ask for the same spread between the refined and fuel oil rates from Kansas City as obtains in the adjustment from the midcontinent field, and for local and proportional rates on the fuel oil not less than 3 cents lower than those applying on similar traffic from the midcontinent refineries. The rates sought are 21.5 cents on shipments to Chicago and 19.5 cents when the destination is east of the Indiana-Illinois state line.

Although defendants state that if it were not for the requirements of the fourth section the rate on fuel oil from Kansas City

to Chicago would be the same as the rate on the higher grades, they do not seriously contend that the fuel-oil rate should properly be as high as that on the refined products. They take the position that if there should be a difference the rates should be related on a percentage basis rather than by a fixed amount per 100 pounds. The basis suggested is the inverse of the relationship which the estimated weight per gallon of the refined oils, 6.6 pounds, bears to the estimated weight of the fuel oil, 7.4 pounds, or 89.2 per cent.

It is unnecessary to dwell upon this proposal of the defendants, however, further than to say that it has been put forward by them recently in other and more comprehensive proceedings, including *Pure Oil Co. v. Director General*, 56 I. C. C., 218. In that case we gave careful consideration to the method proposed and rejected it for the reason, more fully discussed in our report therein, that it gives undue emphasis to weight to the apparent exclusion of other elements which may properly be considered in fixing rates.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, we found that a rate of 25 cents would be the reasonable maximum to apply on refined oil from the midcontinent refineries to Chicago, and that the rate on low-grade oils, including fuel oil, to the same point should not exceed 20 cents. This difference of 5 cents between the rates on the two grades of oil is preserved in the present rates, initiated by the Director General of Railroads, which are 4.5 cents above those prescribed in that case. A difference of 5 cents has likewise been found reasonable by us in other cases involving the rates on oils from the midcontinent field to various destinations, including *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.*, 43 I. C. C., 515; *Codington County Oil Co. v. A., T. & S. F. Ry. Co.*, 53 I. C. C., 234; and *Pure Oil Co. v. Director General*, *supra*. In view of these decisions it seems unnecessary to discuss at length the various exhibits filed by complainants setting forth the comparative values of fuel oil and refined oil and the differences between the rates on those commodities to other destinations.

The average revenue per ton-mile on fuel oil from the midcontinent field to Chicago is 7.9 mills, and from Kansas City 10.86 mills. The rate of 21.5 cents sought by complainants would yield 9.53 mills, substantially the same as the ton-mile revenue of 9.46 mills which defendants now receive under the rate of 19.5 cents from the midcontinent refineries to St. Louis. This latter rate was made by adding 4.5 cents, the increase authorized by the Director General, to the rate of 15 cents prescribed in *Midcontinent Oil Rates*, *supra*.

Upon consideration of the record we find that the adjustment of rates complained of on refined and fuel oil, in carloads, to Chicago

is, and for the future will be, unreasonable and unduly prejudicial to complainants to the extent that the rate on fuel oil from Kansas City to Chicago exceeds or may exceed a rate at least 5 cents lower than the rate contemporaneously maintained on refined oil between the same points, and to the extent that rates on fuel oil, local or proportional, from Kansas City to Chicago exceed or may exceed rates at least 3 cents lower than rates contemporaneously maintained on fuel oil from the midcontinent field to Chicago.

An appropriate order will be entered.

57 I. C. C.

No. 10567.

NEW JERSEY ZINC COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, ET AL.

Submitted October 15, 1919. Decided February 27, 1920.

Rule of the consolidated classification providing the basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to the original loading points not found to be unreasonable or unduly prejudicial. Complaint dismissed.

Frank M. Swacker for complainants.

W. E. Prendergast, Robert W. Fyfe, J. N. Steadwell, N. W. Proctor, R. N. Collyer, and Douglas Swift for Director General and other defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND WOOLLEY.

BY DIVISION 1:

It is alleged in the complaint herein that the rules of the official, southern, and western classifications providing the basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to the original loading points are unreasonable and unduly discriminatory. We are asked to prescribe reasonable and lawful rules for the future, also to award reparation on various shipments of sulphuric acid made within the statutory period, but subsequently the prayer for reparation was withdrawn.

Complainants are engaged in the manufacture of sulphuric acid and chloride of zinc at points in Illinois, Ohio, Pennsylvania, and Wisconsin, from which points these commodities are shipped to various interstate destinations. The transportation is in tank cars owned or leased by complainants. Commodity rates in many instances apply to carload shipments from the manufacturing to consuming points but only class rates are maintained in the opposite direction. When the cars are unloaded at destination they are generally returned to the original point of shipment but occasionally they are sent to other plants of complainants. Frequently they are not com-

pletely unloaded at destination, certain acid or "sludge" being left in the car, the amount varying from a negligible quantity to in some instances 45,000 pounds.

The rules in the classifications complained of provide as follows:
Official classification:

Small quantities of Acids, mixed or otherwise, in returning Acid Tank Cars will be charged for at 3d class rate, except that when carload rate and minimum weight for the article in tank cars will make a lower charge, the latter will apply.

Western classification:

Quantities of Acids in returning tank cars to original point of shipment will be charged for at actual weight at the rating provided for L. C. L. shipments in barrels, except that when carload rate and minimum weight for the article in tank cars will make a lower charge, the latter will apply.

Southern classification:

On that portion of a tank car shipment of Sulphuric Acid or Oil of Vitriol, remaining in the tank car after partial unloading at destination, and returned in the original tank car to the original shipping point, the L. C. L. rates on shipments in barrels will be applied, based on actual weight, subject to Rule 18, except that if the remaining substance is without commercial value and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee, the weight thereof need not be declared, and no charge shall be made therefor.

It developed at the hearing that after the complaint herein was filed the defendants proposed to establish in the consolidated classification a rule reading as follows:

If tank cars are not completely unloaded at destination and the remainder is returned in the same tank car to the original shipping point, the rating applicable on the same article in less than carload quantities in bulk in barrels shall apply, the charge not to exceed the charge for a carload of the same freight in tank cars; except that if the remaining substance is without commercial value, and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee, the weight thereof need not be declared, and no charge shall be made therefor. * * *

We are now virtually asked to pass upon the latter rule which has since been published in the consolidated classification effective December 30, 1919, superseding the rules assailed in the complaint. Complainants insist that this rule is subject to most of the objections to which the rules formerly in effect were subject, and ask that the following rule be established in lieu thereof:

If tank cars are not completely unloaded at destination and are returned to the original point of shipment, or sent to other points for unloading, that part of the original load remaining in the car will accrue freight charges on actual weight at the carload rate applicable on the same article in carloads between the same points in the opposite direction, except that if the material left in the car does not exceed 1,000 pounds in weight, and no commercial consideration is given to it, the car shall be considered as empty.

It thus appears that complainants here seek such modification of the rule under consideration as will authorize in connection with the transportation in question: (1) The application of the carload rate between the same points in the opposite direction, based on actual weight; (2) transportation without charge when the weight is 1,000 pounds or less and no credit is given the consignee on account thereof; (3) like application of the rule in connection with tank cars moving to points other than the original shipping points. It is asserted by complainants that if the rule were modified as here requested, returned acid or sludge weighing less than 1,000 pounds will be given no commercial consideration as between them and their customers.

The consignees' failure to completely unload the cars is due principally to crystallization of the acid, occasioned by low temperature or to the accumulation of a sediment in the bottom of the car from the precipitation of the acid, which deposit can not readily be forced through the blowpipe used for unloading. In some instances the incomplete unloading is stated to be due to carelessness, defective outlet or discharge pipe, or to avoid demurrage. Crystallized acid liquefies under sufficiently high temperature without substantial deterioration and if the liquefaction is not effected by heating the car at the unloading point it is effected by the addition of the other acid in the subsequent reloading. Sludge is only removed by washing the car, and as the action of water when mixed with the acid is injurious to the car and the released sludge may pollute neighboring streams, the car is only washed when a considerable quantity of sludge has accumulated. Certain of the sludge remaining in a car is "picked up" through agitation by the acid when the car is reloaded, but the entire weight is then billed as acid.

Chloride of zinc does not crystallize or precipitate a sediment and the return movement thereof is small compared to that resulting from shipments of sulphuric acid. Complainants have only recently commenced the manufacture of this commodity and with a few exceptions all cars of chloride of zinc loaded by them were returned empty, but they consider that the same rule should be applied to this commodity as to sulphuric acid.

Complainants testify that ordinarily, in making settlement with the consignee no deduction from the invoice price is made when the residuum is less than 500 pounds in weight, though a credit is given when the weight is 500 pounds or more, from which credit is deducted the freight paid by complainants on the return movement.

Complainants testify that the sludge is valueless; that while the accumulation in a car may be included in repeated sales there are no repeated payments and that they derive no benefit from the move-

ment. However, it is conceded that "it is impossible to say when you leave sludge and get acid"; and despite the fact that the accumulation in an unwashed car generally increases with each successive shipment of acid it frequently happens that a greater quantity goes out in a car of acid than is returned in the same car following the unloading. It also appears that the accumulation or deposit from strong acids such as manufactured by complainants more generally has commercial value than that resulting from weak acids.

Disclaiming that the reduction in the basis of charges is sought on the ground that the shipments are returned shipments, complainants nevertheless contend that the service of returning the empty car is included in the rate on the loaded movement from its plants and that a low basis of charges should be accorded for the movement under consideration as the revenue therefrom is "velvet" to the carriers. The defendants challenge these respective claims, but we think it only necessary to say in this connection that the rule properly contemplates a transportation service to the shipper for which reasonable transportation charges should be provided.

It is pointed out that in handling the shipments in question the carrier is relieved of the expense incident to handling ordinary less-than-carload shipments but defendants claim that carriers frequently load or unload carload traffic at pier stations and also at certain inland points and often require shippers to load and unload less-than-carload shipments of exceptionally heavy and bulky freight; also that complainants have the benefit of the less-than-carload rates though relieved of the necessity of furnishing a less-than-carload container and paying freight charges on the weight of same. They also assert that complainants are seeking the carload rate on less-than-carload quantities, and insist that the modification of the rule asked would constitute a radical departure from the well-established principle that a carload rate and a carload minimum weight are inseparable.

Complainants show that the freight charges covering the movement in question at times exceeded in amount the value of the acid returned, but sulphuric acid of the grade manufactured by complainants is of low value and would not normally move long distances in less-than-carload quantities and many of complainants' shipments move a very considerable distance.

Complainants further claim that the rules of the classification provide for the return as empty of cylinders in which gas has been transported though a portion of the gas may still remain therein; also for the free return of brine, not exceeding 3 inches, in wooden tank cars. Defendants testify that the rule cited respecting cylinders was established upon representations that the re-

turned gas was valueless and that they will seek to modify such rule if an investigation develops that it has a commercial value; also that brine is necessary for the preservation of pickles, is not sold with the pickles, and its return in the car is necessary in the interest of both the shipper and the carrier, as a protection to the car.

In *Aetna Explosives Co. v. Director General*, 58 I. C. C., 175, we found that the charges assessed on certain shipments of sulphuric acid remaining in tank cars returned from points in Pennsylvania to original loading points in California, based on the then applicable provision of western classification, were unreasonable and awarded reparation upon the basis of the charges that would have accrued under the identical rule in western classification here assailed, established subsequent to the movement of the shipments involved in that complaint.

The rule in the consolidated classification is admittedly more favorable to complainants than the rules assailed in the complaint.

Upon consideration of the facts of record we find that the rule in the consolidated classification has not been shown to be unreasonable or unduly prejudicial and an order will be entered dismissing the complaint.

57 I. C. C.

No. 10430.¹

GOODYEAR TIRE & RUBBER COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted May 9, 1919. Decided February 10, 1920.

Ratings and rates on carload shipments of rubber-tire tubes, pneumatic rubber tires, and solid rubber tires, unmounted, and on solid rubber tires mounted on iron or steel base, from points in official and western classification territories to points in southern classification territory, when the traffic is governed by the southern classification, not found unreasonable in the past. Reasonable rating and maximum rates on straight and mixed carload shipments prescribed for the future.

Albert L. Viles for Goodyear Tire & Rubber Company and Kelly Springfield Tire Company; *R. G. Kreidler* for Goodyear Tire & Rubber Company; *Leo H. Ley* for Kelly Springfield Tire Company; and *A. C. Redman* and *H. C. Lust* for McGraw Tire & Rubber Company.

J. C. Williams for Akron, Canton & Youngstown Railway Company; and *Edward H. Hart*, *William Burger*, and *R. Walton Moore* for southern classification lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

The complainants manufacture rubber tires and rubber-tire tubes at Akron, East Palestine, and Wooster, Ohio, Buffalo, N. Y., and Cumberland, Md. They allege that the southern classification first-class rating, any quantity, and the resulting rates, applied by defendants on various shipments of rubber-tire tubes; pneumatic rubber tires and solid rubber tires, unmounted; and the second-class rating, any quantity, and the resulting rates, applied by defendants on solid rubber tires mounted on iron or steel base; from Akron, East Pales-

¹ This report also embraces No. 10430 (Sub-No. 1), Kelly Springfield Tire Company v. Akron, Canton & Youngstown Railway Company, Director General, et al.; No. 9350, Goodyear Tire & Rubber Company v. Akron, Canton & Youngstown Railway Company et al.; No. 9350 (Sub-No. 1), McGraw Tire & Rubber Company v. Pennsylvania Company et al.; and No. 9350 (Sub-No. 2), Kelly Springfield Tire Company v. Akron, Canton & Youngstown Railway Company et al.

tine, Wooster, Buffalo, Cumberland, and other points in official classification territory, and from points in western classification territory, to Atlanta, Ga., and other points in southern classification territory, when governed by the southern classification, were and are, as applied on car-lot shipments, in violation of sections 1, 2, 3, and 4 of the act to regulate commerce and section 10 of the federal control act. Complainants ask reparation on shipments on which the freight charges were paid within the statutory period and for the establishment of a carload rating of third class on the articles named in straight or mixed carloads. A minimum of 16,000 or 20,000 pounds is suggested.

The rubber-tire industry is an adjunct of the automobile industry, and each has developed enormously during the past 20 years. The plants of complainants and other principal manufacturers of rubber tires and tire tubes are located in official classification territory. They ship tires and tire tubes to consumers, sales branches, and warehouses in the principal cities in the south, also to automobile assembling plants at Memphis, Tenn., Atlanta, Ga., and Charlotte, N. C. The shipments to southeastern points were in some instances governed entirely by the southern classification, and in others by the official or western classification to the Ohio or Mississippi rivers or Virginia cities, and southern classification beyond.

Except as otherwise noted the ratings referred to were those in effect prior to December 30, 1919.

Rubber tires and tire tubes, any quantity, were rated in the southern classification as follows:

Tires, not otherwise indexed by name:

Rubber—

Pneumatic, see Note 1—

	Class.
In wrapped bales or wrapped bundles, see Note 2.....	1½
In bundles inclosed in burlap wrapped fiberboard or pulp-board containers, see Note 3.....	1
In wire-bound bundles, see Note 5.....	1½
In boxes or crates, see Note 4.....	1
Loose or in packages, minimum weight 16,000 pounds.....	1

Solid—

In burlapped bales or burlapped bundles.....	1½
On burlapped reels.....	1½
In bundles inclosed in burlap wrapped fiberboard or pulp-board containers, see Note 8.....	1
In boxes or crates, see Note 4.....	1
Solid, mounted on iron or steel base, loose or in packages.....	2

Tire tubes, rubber, in boxes or crates..... 1

Note 1 provided that the ratings on pneumatic tires also apply on these tires containing inner tubes. Notes 2, 3, 4, and 5 related to packing requirements.

It is stated on behalf of complainants that pneumatic and solid tires weigh about 9 pounds and 18 pounds per cubic foot, respectively; that the value of pneumatic tires ranges from 65 cents to \$1.32 per pound, and of solid tires from 29.6 cents to 31.9 cents per pound. Tires are generally shipped wrapped in heavy paper, in paper-lined cars. The value of the tubes is stated to be about \$1 per pound and the per cubic foot weight about 15 pounds. Exhibits offered in evidence show that 26,854 pounds of pneumatic rubber tires and tire tubes, and considerably more than 30,000 pounds of solid tires, mounted or unmounted, have been loaded in standard 36-foot cars.

While there have been some changes with respect to wrapping and packing requirements, the ratings complained of were in effect for a number of years and apparently were established to cover chiefly shipments in less than carloads. The car-lot movement has increased from an occasional instance until at the present time over 90 per cent of the shipments made by some of the complainants to points in the southern classification territory are in car lots. Shipments in car lots to points in southern classification territory made by complainants alone would considerably exceed 200 cars annually.

The official classification provided carload rating of third class on rubber-tire tubes, in boxes or crates, minimum 16,000 pounds; on pneumatic rubber tires, loose or in packages, minimum 16,000 pounds; and on solid rubber tires, mounted on iron or steel base, loose or in packages, minimum 30,000 pounds. The western classification gives second-class rating to the first two descriptions, and third class to the third.

Complainants compare the ratings assailed with the carload ratings in the southern classification on other parts of automobiles, including fourth class on automobile wheels, with or without rubber tires, minimum 20,000 pounds; and third class on steering wheels and on automobile lamps, minimum 16,000 pounds. They show that applications for the establishment of a carload rating on tires in southern classification territory have been filed by various shippers, and that on one occasion the Southern Classification Committee decided to establish a carload rating, but later rescinded this decision for reasons not disclosed.

It is also observed by complainants that the Committee on Uniform Classification recommended the establishment of the following descriptions: (1) pneumatic rubber tires, loose or in packages, carloads, minimum 16,000 pounds; (2) pneumatic rubber tires, not otherwise indexed by name, loose or in packages, and rubber-tire tubes, in boxes or crates, mixed carloads, minimum 16,000 pounds; and (3) solid rubber tires, or solid rubber tires mounted on iron or

steel base, loose or in packages, in straight or mixed carloads, minimum 30,000 pounds. The members of the Uniform Committee representing the Southern Classification Committee objected to these carload entries and published only the uniform less-than-carload descriptions in their classification, but, as above stated, the western and official classification committees accepted and published the carload descriptions, and also established carload ratings.

In resisting complainants' contention the defendants insist that the carload movement of tires and tubes is to relatively few points, and that the volume of traffic to these points is small in comparison with the total less-than-carload movement between points in southern classification territory. The local movement of tires in the south is unquestionably in less-than-carload quantities, but the preponderance of inbound traffic, as hereinbefore stated, is in carloads.

In answer to complainants' comparison of ratings in the southern classification on tires and tubes with those on other parts of automobiles, defendants urge that the latter ratings were established to encourage the building and extension of factories and automobile assembling plants throughout the south, and that a carload rating was not provided on tires and tubes in the belief that such a rating would not yield similar results. It does not clearly appear how a carload rating on other parts of automobiles would develop the industry to a greater extent than would a like rating on tires and tubes, without which automobiles can not be operated.

Defendants compare the ratings assailed with the first-class rating, any quantity, applicable in southern classification territory on gas water heaters, fire extinguishers, addressing machines, electric or gas fixtures, talking machines, pianos, dry goods, boots and shoes, rubber mats and matting, rubber soling, and various other articles, some of which are said to move in carload quantities. The second-class rating, any quantity, on rubber hose, rubber belting, and rubber heels, is also cited. Many of these commodities are in no way analogous to rubber tires or tubes, and the comparisons are largely restricted to statements of ratings, value, and weight density, with only incidental reference to volume of traffic and other essential transportation qualities. Indeed, one of defendants' witnesses, in discussing the rating on tires, testified that "volume of tonnage had not entered materially into the situation." Value and density are important considerations in determining ratings of commodities but they must be used in conjunction with the other elements of classification which we have often discussed, particularly in the *Western Classification Case*, 25 I. C. C., 442, 472, 473.

Defendants also urge that any-quantity ratings are nondiscriminatory in that they enable small shippers to compete on fairly equal terms with shippers of carload quantities. Opposed to this conten-

tion is the fact that the southern classification observes the distinction between carload and less-than-carload ratings on the great majority of commodities, and that the defendant carriers have voluntarily departed from the any-quantity basis in establishing carload rates on tires to the Gulf cities.

Defendants say that the any-quantity rating has not retarded the commercial development of the industry and that the establishment of a carload rating would diminish the revenues of the carriers without benefiting the purchasers of tires. Carriers are entitled to reasonable compensation for their services, but fear that the consumer may not participate in prospective reductions in ratings and rates is no valid objection to the establishment of a carload rating and is without weight in determining questions of reasonableness. Another contention is that, as hereinbefore stated, changes have been made in the packing requirements since the any-quantity rating was established, resulting in material savings to the shippers on crating, bundling, and the cost of transporting the packing formerly used. As to this, complainants observe that similar changes have been made in the other principal classifications, in which carload ratings are provided, and that the packing and wrapping descriptions are now uniform.

In support of the allegation of unreasonableness complainants point out that the class rates applicable to tires and tubes in carloads from points in official classification territory to points in southern classification territory are higher than the class rates applicable on these articles in carloads for similar distances from and to points in the official and western classification territories. This comparison does not establish the unreasonableness of the rates assailed.

The complaints of unjust discrimination and undue prejudice are based upon the fact that there are lower carload ratings on other commodities. There is no evidence of competition and the record does not otherwise sustain these allegations.

The alleged violations of section 4 rest upon (1) carload rates on tires from Akron to Key West, Fla., when for export, which are lower than the any-quantity rates, applicable on domestic shipments to Jacksonville, Fla., and Atlanta, the latter points being directly intermediate to Key West from Akron, and (2) divisions accorded the southern classification lines under joint carload commodity rates from Akron to California terminals via Cincinnati, New Orleans, and other Ohio and Mississippi river crossings, which are lower than the any-quantity rates governed by the southern classification contemporaneously in effect from and to the junction points between which the divisions accrue. These rate situations do not constitute departures from the rule of the fourth section and will not be further considered. *Conference Rulings 299 (c) and 304 (a).*

In the *Consolidated Classification Case*, 54 I. C. C., 1, we recommended the establishment of a rule providing that charges on mixed carload shipments shall be based on the carload rate applying on the highest-rated article and subject to the highest minimum weight attaching to any article in the load. In the consolidated freight classification which became effective December 30, 1919, superseding the official, southern, and western classifications formerly applicable, the ratings here assailed are carried forward without change with the exception that a carload rating of first class, minimum 16,000 pounds, is provided for rubber-tire tubes and pneumatic rubber tires governed by the southern classification. Rule 10 of the consolidated freight classification, in so far as shipments under class rates governed by the southern classification are concerned, contains the mixed-carload provision recommended by us.

We find that any ratings or rates applied by defendants to the transportation of rubber-tire tubes, in boxes or crates, or pneumatic rubber tires, loose or in packages, in straight or mixed carloads, minimum weight 20,000 pounds; on solid rubber tires, unmounted, or mounted on iron or steel base, loose or in packages, in straight carloads, minimum weight 30,000 pounds; and on rubber-tire tubes, in boxes or crates, pneumatic rubber tires, loose or in packages, and solid rubber tires, unmounted, or mounted on iron or steel base, loose or in packages, in mixed carloads, minimum weight 30,000 pounds, from points in official and western classification territories to points in southern classification territory, when the traffic is governed by the southern classification, are and for the future will be unreasonable to the extent that they exceed the third-class rating and rates contemporaneously in effect.

There remains the question as to whether the ratings and rates under attack were unreasonable in the past. In *Brunswick-Balke-Collender Co. v. C. G. W. R. R. Co.*, 56 I. C. C., 340, we said:

The lower rating found reasonable for the future represents a change from a classification basis which has long been maintained and recognized in southern classification territory. Under the circumstances we do not find that the rating and rates assailed were unreasonable in the past.

In the instant case the ratings and rates applied have been maintained for a number of years. From the facts of record we do not find that the ratings and rates attacked in this proceeding were unjust or unreasonable in the past.

The carriers defendant in No. 9350 and No. 9350 (Sub-Nos. 1 and 2), are now under federal control, and as the Director General is not a party defendant no order for the future with respect to these cases will be entered. Orders dismissing the complaints in No. 9350 and Sub-Nos. 1 and 2 thereto, and giving effect to our conclusions in No. 10430 and No. 10430 (Sub-No. 1), will be entered.

No. 9168.

MEMPHIS FREIGHT BUREAU ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY AND
DIRECTOR GENERAL.

Submitted September 13, 1919. Decided January 5, 1920.

On rehearing reparation awarded to complainant factors as representatives of shippers on account of charges illegally collected on shipments of cotton concentrated at Memphis, Tenn., and subsequently reshipped. Original report, 50 I. C. C., 345.

Riddick & Riddick, Frank Lyon, and James S. Davant for complainants.

Thomas Bond for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report, 50 I. C. C., 345, we found that between September 1, 1911, and December 11, 1914, the tariff rules and regulations of the St. Louis & San Francisco Railroad Company, hereinafter called defendant, as construed and applied by it, governing the payment of refunds on shipments of cotton to Memphis for concentration or compression and reshipment beyond, were unjust and unreasonable in so far as they operated to deny those who bore the increased inbound rates, manifestly established to control or influence the outbound movement, the refunds which were to be made when that purpose should have been accomplished. We made a permissive award of reparation under which defendant was authorized, but not directed, to pay reparation under certain conditions to the complainant factors, for and on account of the individual growers and shippers who bore the increased charges. Upon failure of defendant to pay the reparation authorized, and at complainants' instance, this proceeding was reopened. The Director General was made a party defendant and some 3,500 country growers and shippers were made parties complainant. A further hearing was then held, after which briefs were filed by the parties. Reparation is asked only on shipments moving from May 27, 1913, to December 11, 1914.

The complainant factors contend that we should issue a mandatory award of reparation in their favor. They point out that without specific instructions from the many hundreds of individual growers who ship the cotton to them for sale it is their duty and custom as factors to pay the freight charges, and to file claims

and suits for loss and damage and excessive freight charges in connection with shipments of cotton. They testify that this custom is not only recognized by the growers and factors themselves, but by the railroads who settle with the factors for claims and suits. The factors remit the proceeds from the claims and from the sale of the cotton, after their commissions and expenses have been deducted, including, of course, the expense of maintaining suits and collecting claims. If reparation were awarded directly to the 3,500 complainant growers, the complainant factors urge that they would be deprived of their lien for, and embarrassed in the collection of, their expenses. The following is quoted from Ruling Case Law, Vol. II, p. 778:

As already seen, a factor has the implied power to sell the goods of his principal in his own name, and possesses, as against his principal, in the absence of some stipulation to the contrary, a special interest therein, and the proceeds thereof, and the right to control the same until he receives his compensation for services rendered in respect thereto.

If reparation can not be awarded in favor of them, the complainant factors contend that it can be awarded in favor of the individual growers and that their claims are not barred. They point out that we so decided in our original report when we made a permissive award of reparation in favor of the growers on claims filed within the statutory period in the names of the factors. This decision is in accord with other cases. *Youngblood v. T. & P. Ry. Co.*, 21 I. C. C., 569; *Knopke Bros. v. C. & A. R. R. Co.*, 50 I. C. C., 465. In addition to claims presented in defendant's application of May 8, 1915, other claims were filed in the formal complaint on September 2, 1916, and in letters of the Memphis Freight Bureau received June 28 and December 4, 1915.

Defendant contends that the damage claimed is uncertain because the identity of each bale of cotton was not preserved during the handling in and out of Memphis, but defendant has permitted substitution in transit under its tariffs in effect before and after the movement, and these tariffs have been accepted as the basis on which reparation should be awarded. But defendant now seeks to retain the unpaid refunds to which we have found it is not entitled. It also contends that the claims of the 3,500 original consignors are barred as the growers were not specifically named as complainants until October 14, 1918; also because detailed description of each shipment was not furnished. It does not deny that certain specific shipments were described as representative of all the shipments involved.

Bearing in mind that until they receive payment for their services and expenses the factors have a property right or interest against their principals in the proceeds resulting from the handling of the
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cotton, it is apparent that we can not justly or legally deprive them of that right by awarding reparation directly to the principals.

We have found that the tariff provisions and regulations assailed were unjust and unreasonable to the extent previously stated herein. We further find that the country growers and shippers made the shipments involved and paid and bore the charges thereon through complainant factors; that they have been damaged to the extent of the difference between the charges paid and those herein found reasonable; and that the complainant factors, in their representative capacity, are entitled to reparation with interest on shipments made subsequently to May 27, 1913, provided such shipments were covered by claims presented to us within the statutory period. The formal complaint was filed within six months from our letter of March 11, 1916, advising that this complaint could not be adjusted informally. The exact amount of reparation due can not be determined on this record and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the dates on which charges were paid, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

HALL, *Commissioner*, dissents.

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No. 10514.

SOUTH BEND CHAMBER OF COMMERCE ET AL.
v.
DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted December 5, 1919. Decided March 2, 1920.

Percentage basis applied in making rates between South Bend, Mishawaka, Elkhart, Goshen, Napanee, and Michigan City, Ind., and points in eastern trunk line territory and New England territory found relatively unreasonable and unduly prejudicial to such points and unduly preferential of points in western and northern Ohio and southwestern Michigan.

Frank A. Larish and James F. Dougherty for complainants; and *Nuel D. Belnap, John S. Burchmore, and Luther M. Walter* for Chamber of Commerce of Michigan City, Ind.

C. H. Rodehaver for merchants and manufacturers of Niles, Mich.; *Ernest L. Ewing* for Cadillac Lumber Exchange and others; *Thomas B. Moore and Beaumont, Smith & Harris* for Michigan Manufacturers Association; *William A. Slater* for Grand Rapids Association of Commerce; *Francis D. Campau, Frank E. Jones, and C. P. Thomson* for Grand Rapids Furniture Manufacturers Association; *E. C. Nettels* for Michigan Traffic League and Battle Creek Chamber of Commerce; *F. F. Kleinfeld* for "Thumb" Shippers Association; and *Eugene Wallace* for Battle Creek Chamber of Commerce and Kellogg Toasted Corn Flakes Company, interveners.

R. L. Tuttle for American Box Board Company; *J. K. Hudson* for Aladdin Company and Bay City Board of Commerce; *Donald MacDonald* for Saginaw Board of Commerce; and *Herman Mueller* for Lansing Chamber of Commerce.

John C. Graham for Jackson Chamber of Commerce and Michigan Hay & Grain Association; *Frank E. Coombs* for Benton Harbor Chamber of Commerce, St. Joseph Chamber of Commerce, and Michigan Fruit Packers Federation; *George J. Bolander* for Kalamazoo Chamber of Commerce; and *Harris E. Galpin* for Muskegon Employers Association and Muskegon Chamber of Commerce.

John C. Bills, D. P. Connell, E. M. Davis, W. K. Williams, C. P. Stuart, and T. H. Burgess for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This case was made the subject of a proposed report which was served upon the parties. Exceptions were filed by the complainants and the Michigan City intervener and oral argument had.

The initial complainant herein is a corporation organized to further the commercial, industrial, and municipal interests of South Bend, Ind. Its members and the other complainants herein are corporations, partnerships, and individuals having their principal places of business for the manufacture and sale of various commodities at South Bend, Mishawaka, Elkhart, Goshen, and Napanee, Ind. The complaint of these cities is that for the transportation of class and commodity traffic between those cities and points in trunk line territory and New England territory shippers are subjected to the payment of rates which are unjust and unreasonable, absolutely and relatively, in violation of the act to regulate commerce and the federal control act; and which are unjustly discriminatory and unduly prejudicial and in violation of the long-and-short-haul provision of the fourth section of the act to regulate commerce.

The class rates paid by the complainants between South Bend and the associated cities and New York, N. Y., are, in cents per 100 pounds, for the six classes, as follows:

Classes.....	1	2	3	4	5	6
Rates	108	95	72	50.5	43	36

Between trunk line territory and central territory, rates are adjusted in relation to the scale of rates applicable between Chicago and New York, which are regarded as base rates and Chicago as a 100 per cent point. Points in central territory are placed in groups which take percentages of the base rates, theoretically in the proportions that the short-line distances between such points and New York bear to the short-line distance between Chicago and New York. The percentages on eastbound traffic are not always the same as on westbound traffic. Rates between points in central territory and points in trunk line territory, other than New York, are made differentially higher or lower than rates to or from that point.

Under this adjustment the complaining cities are grouped with other points in northern Indiana taking 96 per cent of the base rates. Complainants contend that their manufacturers and jobbers compete with manufacturers and jobbers of similar character, particularly those located in the central and northern portions of the states of Ohio and Indiana and that portion of the southern peninsula of Michigan lying immediately north of the complaining cities; that the revenue per mile of haul under rates between the competitive

territory specified and New York is lower than that under rates paid by the complaining cities; that their favorable location on the great channels of through transportation between Chicago and New York entitle them to rates made 92 per cent of the base rates, which would reduce their rates to and from New York in cents per 100 pounds on the respective classes in the following amounts:

Classes	-----	1	2	3	4	5	6
Amounts	-----	4.5	4	3	2	1.5	1.5

The Chamber of Commerce of Michigan City, Ind., composed of merchants and manufacturers of that city, filed a similar complaint, which was permitted to be filed as of the nature of an intervention. Michigan City is grouped with Chicago and other points in the 100 per cent group. It, too, is seeking a reduction of its percentage to 92 per cent, which would result in reductions in the rates in the following amounts:

Classes	-----	1	2	3	4	5	6
Amounts	-----	9	8	6	4	3.5	3.5

In the *Michigan Percentage Cases*, 47 I. C. C., 409, we held that the rates to certain points in Michigan were unduly prejudicial to such cities, and that the prejudice could be removed only by reducing the percentages of the Michigan groups. Grand Rapids, Kalamazoo, Marshall, Battle Creek, and other points in Michigan in the 96 per cent group were reduced to 92 per cent. One effect of our order in that case was the division of the former 96 per cent group at the Indiana-Michigan state line. After the filing of the complaint in this case, in a petition to reopen the *Michigan Percentage Cases*, *supra*, the Director General averred, among other things, that the discrimination alleged by the complainants herein, if any existed, was due solely to the fact that the defendants in that case had obeyed our order and that the only proper method of removing such discrimination was to change the percentage bases in effect in Michigan, and especially in the 92 per cent group. The petition was denied. Some of the complainants in that case, interested in the preservation of the adjustments there obtained, intervened in the present case.

South Bend, Mishawaka, Elkhart, and Goshen are in the central portion of northern Indiana near the Indiana-Michigan state line. South Bend is less than 7 miles south, and Niles, Mich., in the 92 per cent group, is 5 miles north of that line. South Bend is 96 miles east of Chicago. By railroad Mishawaka is 4 miles east of South Bend, but its suburbs adjoin those of South Bend and the two cities are practically one industrial community. Elkhart is 11 miles and Goshen 31 miles east of Mishawaka. The complaining

cities are located between Chicago and Toledo, Ohio, on the main line of the New York Central Railroad. South Bend and Mishawaka are also on the line of the Grand Trunk Western Railway between Chicago and Kalamazoo, Mich. Goshen and Elkhart are served by the Michigan division of the Cleveland, Cincinnati, Chicago & St. Louis Railroad operating from Benton Harbor, Mich., to Louisville, Ky. A branch of the Michigan Central connects South Bend with the main line of that company. In addition other north-and-south lines such as those of the Lake Erie & Western, New Jersey, Indiana & Illinois railways and the Pennsylvania Company reach South Bend, and in connection with eastern lines of the Baltimore & Ohio Railroad, Wabash Railroad, and the Pennsylvania Company form other routes. Napanee is on the main line of the Baltimore & Ohio Railroad between Chicago and Baltimore, Md. It is 9 miles west of Milford Junction, Ind., which is 11 miles south of Goshen.

Michigan City is located on the south shore of Lake Michigan, 56 miles east of Chicago and about 10 miles southwest of New Buffalo, Mich., a point in the 92 per cent group. It is on the main lines of the Michigan Central and Pere Marquette railroads. It is also served by the north-and-south lines of the Lake Erie & Western and the Chicago, Indianapolis & Louisville railroads and by traction lines.

Under the formula used in making these percentage-group rates, the desired percentage is obtained by deducting a fixed-terminal charge of 6 cents per 100 pounds from an assumed rate from Chicago to New York of 25 cents per 100 pounds; the remainder is divided by the short-line distance from Chicago to New York; the result is multiplied by the short-line distance of the point from which the percentage is sought from New York, the terminal allowance is again added and the percentage which the resulting rate bears to the 25-cent rate is the percentage to be used. Prior to *The Five Per Cent Case*, 32 I. C. C., 325, the sixth-class rate from Chicago to New York was 25 cents per 100 pounds. Due to the increases allowed in that case, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and General Order No. 28 of the Director General of Railroads, the present sixth-class rate from Chicago to New York is 37.5 cents per 100 pounds, or 50 per cent higher than the 25-cent rate. Consequently in their exhibits complainants have deducted 9 cents as a terminal allowance from the sixth-class rates, and, following the formula described, compared the resulting revenue per mile of haul at the complaining cities with that at points in Ohio and Michigan, and showed that the revenue under rates to the complaining cities is higher than that from rates to points in Ohio and many of the Michigan points. Defendants con-

tend that this manner of obtaining rates does not correctly disclose the relative situation for the reason that the revenue per ton per mile decreases as the distance increases only because the terminal allowance, a constant factor, is necessarily proportionately diminished as the distance increases. They therefore compare the revenue per ton per mile under the fifth-class rates, and the revenue per 100 pounds per mile under the sixth-class rates, showing that with few exceptions the revenue per ton per mile and per 100 pounds per mile from rates to the complaining cities is lower than from rates to points in Ohio. The fifth-class rates were used for the reason that over 50 per cent of the carload ratings in the official classification are of that class, whereas but 11 per cent are of sixth class.

In many instances the western edges of the rate groups are north-and-south lines of railroad, and many important points formerly recognized as basing points, such as Cleveland and Toledo, are in the western part of the groups. In a grouping system, it necessarily follows that rates at such points are lower, distance considered, and the revenue per ton per mile less than at other points in the group.

Michigan City is on the extreme eastern edge of the 100 per cent group. To grant it the relief prayed, a 92 per cent basis, would make the revenue per ton per mile under rates between New York and Michigan City lower than that under rates between New York and Chicago. Rates between New York and Michigan City are the same as the rates between New York and Chicago. Rates between Michigan City and the west are higher than those between Chicago and the west. Gary, East Gary, and Porter, Ind., are in the Chicago switching limits, Michigan City is not. Each case must be considered on its merits and whether the adjustment between Michigan City and the west is unreasonable or prejudicial is not in issue here.

West of the line of the New York Central running north from White Pigeon to Grand Rapids, lie 10 cities which have rates that yield lower revenue per ton per mile from the fifth-class rates from and to New York than do the rates to and from South Bend and associated cities and Michigan City. It is practically admitted by the defendants that these points have a basis of rates which is lower than that to which their location entitles them. That the rate disparity between Michigan City in the 100 per cent group, and New Buffalo in the 92 per cent group, is indefensible is admitted.

Because of deflation in the percentages and consequent lower rates to and from points in Michigan beyond South Bend, Elkhart, and Goshen, departures from the provisions of the fourth section exist. The Cleveland, Cincinnati, Chicago & St. Louis Railroad runs from Benton Harbor, through Niles, Elkhart, and Goshen, and south

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through Claypool, Bolivar, and New Paris, Ind., its junctions with the New York, Chicago & St. Louis, Erie, and Wabash railroads. These junctions, also Marion, Milford Junction, and Plymouth, Ind., in connection with eastern carriers, are used in making through routes via which Niles and Benton Harbor are accorded through rates on the basis of 92 per cent of the base rates.

The Grand Rapids branch of the New York Central Railroad from Elkhart to Grand Rapids runs through White Pigeon, Three Rivers, Kalamazoo, and Allegan. To and from the territory along this branch, in the 92 per cent group, through traffic is handled via Goshen and Elkhart, because it is more economical to do so than to move it via the shorter route of the same line via Grand Rapids, Lenawee Junction, and Toledo. After the *Michigan Percentage Cases, supra*, the interested carriers represented to us that departures from the long-and-short-haul provision of the fourth section of the act would be created and departures increased at intermediate points in Ohio and Indiana in complying with the decision. We accordingly authorized temporary relief from the application of the fourth section in this respect.

Defendants urge that if the basis sought by complainants is granted, other cities and towns in central territory, the percentages of which are not exactly upon the formula basis, would seek similar relief, and that a strict application of the percentage formula through the territory would involve serious reductions of revenue. They also call attention to the fact that many of the railroads serving the complaining cities are among those which failed in 1918 to earn their standard returns. While these are proper elements for consideration in determining the reasonableness of rates, they constitute no bar to the granting of relief if rates are shown to be relatively unreasonable or unduly prejudicial.

Defendants also urge that the preponderance of tonnage is eastbound rather than westbound; that overhead tonnage transported from the western edge of central territory, through Illinois, Indiana, and Ohio, increases very materially in the latter state; that the Mahoning and Shenango Valleys in Ohio and Pennsylvania, the great iron and steel producing section of the country, produce enormous volumes of tonnage both for eastbound and westbound movements far in excess of all tonnage produced in Indiana, and that basing points in Ohio may logically be accorded rates which are related more closely to those which an exact application of the percentage formula would afford them than could be claimed by the cities of Indiana with their comparatively lighter tonnage.

Upon consideration of the whole record, we are of the opinion and find that the rates between Michigan City, South Bend, Mishawaka,

Elkhart, Goshen, and Napanee, on the one hand, and points in eastern trunk line and New England territories, on the other, are relatively unreasonable and unduly prejudicial to such cities and unduly preferential of cities in central and northern Ohio, and in Michigan, west of the line of the New York Central Railroad from Elkhart to Grand Rapids and south of the line of the Grand Trunk Western from Grand Rapids to Grand Haven.

The undue prejudice with respect to Ohio points should be removed by reducing the percentage of South Bend and associated cities to 94 per cent, and of Michigan City to 96 per cent, and with respect to the southwestern Michigan points can be removed by increasing the percentage of Niles, Buchanan, Hartford, Holland, and points east thereof to the line above described to 94 per cent, and points west thereof to 96 per cent.

The short-line routes to Kalamazoo and Grand Rapids and points on and east of the line above described do not pass through the complaining cities, and with rates to both groups properly adjusted, it is not apparent that the complaining cities would be injured by allowing traffic destined to points properly entitled to lower rates to move over routes through the higher-rated group, and as to these points we shall allow the temporary relief granted in Fourth Section Order No. 7149 to stand.

The routes and distances to points west and south of the lines above described from Elkhart to Grand Haven are not such as to justify lower rates than at the complaining cities, and that portion of the fourth section order permitting the maintenance of lower rates to such points than to intermediate points will be revoked.

Appropriate orders will be entered.

HALL, *Commissioner*, dissents.

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No. 10822.¹

GENERAL CHEMICAL COMPANY

v.

DIRECTOR GENERAL, DELAWARE, LACKAWANNA &
WESTERN RAILROAD COMPANY, ET AL.

Submitted January 15, 1920. Decided February 11, 1920.

Rates on nitrate of soda imported from Chile, from north Atlantic ports to points in central territory found to have been and to be unreasonable. Reasonable rates for the future prescribed and reparation awarded.

Steele & Otis and *C. J. Nourse* for General Chemical Company; and *F. D. Reily* for Ault & Wiborg Company.

Winthrop & Stimson and *Edward E. Miller* for Aetna Explosives Company; *H. J. Taggart* for Hercules Powder Company; and *Harvey S. Farrow* for E. I. du Pont de Nemours Company, interveners.

Henry Wolf Bikelé and *Morrison R. Waite* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

The General Chemical Company is a corporation having its principal office in New York, N. Y., and is engaged in the manufacture and sale of heavy chemicals at various points in the United States and the Dominion of Canada, among which are one each at Willow, Ohio, and Hegewisch, Ill. These points, on traffic here considered, take the same rates, respectively, as Cleveland, Ohio, and Chicago, Ill., near which they are located.

By complaint, filed August 13, 1919, as amended, it is alleged that the rates on nitrate of soda, in carloads, from New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to Hegewisch, Ill., and Willow, Ohio, were and are unreasonable to the extent that the fifth-class base rate of 45 cents, and the subsequently established commodity rate of 36 cents per 100 pounds, applicable between New York and Hegewisch, Ill., exceeded or exceeds a proposed base commodity rate of 30 cents per 100 pounds. During the period from July 15, 1918, to November 23, 1918, both inclusive, complainant shipped

¹ This report also embraces No. 10742, Ault & Wiborg Company v. Director General, Pennsylvania Railroad Company, et al. The cases were separately heard but involved the same issue.

122 carloads of nitrate of soda, weighing 4,197 net tons, imported from Chile, via New York, and Philadelphia, to Willow, and via Philadelphia, and Baltimore, to Hegewisch.

The establishment of reasonable rates for the future and reparation of \$10,643.42, including war taxes, are sought.

The Ault & Wiborg Company, also a corporation, is engaged in the manufacture of heavy chemicals, inks, and varnishes at Cincinnati, Ohio. It has a plant at Ivorydale, Ohio, within the switching limits of Cincinnati. By complaint, filed August 22, 1919, it is alleged that a fifth-class rate of 36 cents per 100 pounds, charged during the period of August 22, 1918, to December 19, 1918, both inclusive, for the transportation of nine carloads of nitrate of soda, weighing 672,192 pounds, imported from Chile via Baltimore and transported thence to Ivorydale, was and is unreasonable to the extent it exceeded a proposed commodity rate of 22.5 cents per 100 pounds. The relief prayed is similar to that asked by the initial complainant.

Between trunk line territory and central territory, class rates are adjusted in relation to a scale of base class rates applicable between Chicago and New York; points in central territory less distant from New York than is Chicago take percentages of the base rates. Cincinnati is an 87 per cent; Cleveland, a 71 per cent point. Philadelphia and Baltimore take port differentials of 2 and 3 cents, respectively, under New York. The key rate is that from New York to Chicago and will sufficiently disclose the situation of which complaints are made. That rate alone is referred to when not otherwise stated. Throughout the report rates are stated in cents per 100 pounds.

Various companies engaged in the manufacture of explosives and heavy chemicals were permitted to intervene on behalf of complainant. They ask no affirmative relief.

The nitrate of soda here under consideration was imported. On June 24, 1918, the import rate thereon was 24 cents. No commodity rate applicable to domestic shipments obtained. General Order No. 28 of the Director General of Railroads provided:

All export and import rates shall be canceled and domestic rates applied to and from the ports.

In the absence of a commodity rate applicable to domestic shipments the class rate applied. Nitrate of soda in the official classification is rated fifth class. On June 25, 1918, the rate applicable to that class was 45 cents. This class rate is 87.5 per cent in excess of the withdrawn import commodity rate. Between December 24, 1918, and May 19, 1919, carriers operating from Atlantic seaboard ports to central territory published commodity rates applicable therefrom to points in central territory. The base commodity rate

of 36 cents exceeds the withdrawn import rate 50 per cent. Complainants' proposed base rate of 30 cents, 25 per cent in excess of the withdrawn import rate, is alleged by complainants to comport with General Order No. 28, which permitted increases in many rates of not more than that per cent.

Nitrate of soda is used in the manufacture of fertilizers and explosives and for other purposes. It is included in our regulations for the transportation of explosives and other dangerous articles as an oxidizing material. Owing to its susceptibility to damage by air or water it is transported in box cars. It appears that the initial complainant has sustained no loss in its transportation during the past 20 years.

The shipments from New York originated on the lines of either the New York Central or the Delaware, Lackawanna & Western railroads; from Philadelphia on the Philadelphia & Reading Railway; and from Baltimore on the Pennsylvania Railroad. They were delivered by the Baltimore & Ohio, Indiana Harbor Belt, Pittsburgh, Cincinnati, Chicago & St. Louis Railway, or Pennsylvania companies. It is unnecessary to state the names of the intermediate carriers.

Other sodiums of domestic origin, i. e., ash, bicarbonate, bisulphate, caustic, hyposulphite, sal, silicate, sulphate, sulphite, and sulphide, are rated fifth class in the official classification; phosphate of and triphosphate of soda are rated fourth class; and nitre cake and salt cake are rated sixth class. The carload minimum of bicarbonate and triphosphate is 30,000; the minimum of other sodiums, 36,000; while nitre cake and salt cake take the same minimum as that of nitrate of soda, 40,000. Testimony on behalf of the initial complainant indicates that nitrate of soda averages a greater weight per car than other sodiums, and that it is customary to sell the domestic sodiums per minimum car. The shipments of the initial complainant upon which reparation is asked average 68,700 pounds per car; those of the other complainant, 74,688 pounds. Defendants' witness, however, testified that these domestic sodiums in movement throughout eastern territory load as heavily as nitrate of soda. The present price f. o. b. New York of nitrate of soda is the same as that of caustic and hyposulphite sodiums; exceeds the prices of ash and bicarbonate; and is less than those of the other sodiums. The prices of all the sodiums, during the war period, were higher than prior or subsequent thereto. On June 24, 1918, the rate on the domestic sodiums was 26.5 cents; increased, effective June 25, 1918, 25 per cent to 33 cents.

On June 24, 1918, the import rate from the south Atlantic and Gulf ports to Chicago was 17 cents; increased June 25, 1918, 25 per

cent to 21.5 cents; increased, effective November 15, 1919, to 33 cents. On traffic from other than Europe, Asia, and Africa the normal spread of rates from Gulf ports under New York to Chicago was customarily 3 cents, i. e., the rate New Orleans to Chicago was normally the same as the rate from Baltimore to Chicago. Since the last-mentioned date that differential has obtained, but it was not maintained during the shipment period.

Complainant states the rate of 36 cents to have been derived by using the rate from New York to Pittsburgh, Pa., a 60 per cent point, as a base. But Pittsburgh was never given 60 per cent of the base import rate from New York to Chicago, but something in excess thereof. On June 24, 1918, when the import rate was 24 cents the rate from New York to Pittsburgh for the transportation of nitrate of soda was 17 cents. This, defendants show, is due to the fact that import rates were not scaled back into central territory to the same extent as were domestic rates. On June 25, 1918, the rate of 17 cents to Pittsburgh was increased to 21.5 cents, or 25 per cent. This method, complainant asserts, reverses the method of computing rates between New York and points in central territory under which the New York to Chicago rates are used as the base. In this connection, we are referred to *King Powder Co. v. P. R. R. Co.*, 36 I. C. C., 653, in which increased import rates on nitrate of soda in carloads from Baltimore and Philadelphia to Cincinnati were found not to have been justified. We there required the maintenance of rates on this traffic not to exceed from Philadelphia 2 cents and from Baltimore 3 cents less than 87 per cent of the rates concurrently in effect from New York to Chicago. Prior to *The Five Per Cent Case*, 32 I. C. C., 325, the import rate for the transportation of nitrate of soda from New York to Chicago was 20 cents. Following the *King Powder Co. Case*, *supra*, had the rate for the transportation of the same commodity from New York to Pittsburgh been made 12 cents, or 60 per cent of the New York-Chicago rate, augmented by all the increases permitted in *The Five Per Cent Case*, *supra*, *The Fifteen Per Cent Case*, 45 I. C. C., 303, and under General Order No. 28 of the Director General of Railroads, and the resulting rate used as a base in computing the rate from New York to Chicago, the present rate from and to these points would be 31.5 cents.

In requiring that import rates should be canceled and domestic rates substituted therefor, General Order No. 28 did not provide a percental increase.

Nothing here of record demonstrates that rates on nitrate of soda should have been or should be lower than those contemporaneously applicable on domestic sodiums.

MEYER, Commissioner:

The foregoing is substantially the report as to the issues and facts proposed by our examiner and served upon the parties. Exceptions were filed by the defendants to the conclusions recommended by the examiner.

While we have not before us the base rate between New York and Chicago, the rate which we here find reasonable between New York and Hegewisch, a Chicago rate point, may be a proper base rate with relation to which rates to other points in central territory should be made.

Upon consideration of the whole record, we are of the opinion and find that the rates assailed were, are, and for the future will be, unreasonable to the extent that the rates on nitrate of soda, in car-loads, from New York to Hegewisch exceeded or may exceed 33 cents per 100 pounds; that the rates from New York to Willow exceeded or may exceed 71 per cent of the contemporaneous rate from New York to Hegewisch; and that the rates from Philadelphia and Baltimore to Hegewisch and Willow and from Baltimore to Ivorydale exceeded or may exceed rates made 100, 71, or 87 per cent, respectively, of said rates from New York to Hegewisch, less the regular port differentials.

We further find that the complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. As we are without power to order refund of war tax, *Zelnicker Supply Co. v. S. Ry. Co.*, 53 I. C. C., 308, such taxes should be excluded from the statements.

An appropriate order will be entered.

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No. 10734.

MONROE CHAMBER OF COMMERCE

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted January 30, 1920. Decided March 5, 1920.

Defendants' rate of 27.5 cents on coarse grain, in carloads, from Cairo, Ill., to Monroe, La., found not unreasonable, but the existing relationship between the rates on coarse grain, in carloads, from Cairo to Monroe and Rayville, La., found unduly prejudicial to the extent that the rate to Monroe exceeds the rate to Rayville by more than 1.5 cents per 100 pounds.

H. J. Fernandez for complainant.

H. G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

This case was made the subject of a proposed report which was served upon the parties. No exceptions were filed, but since the hearing some of the rates under consideration have been changed. Our report follows to a large extent the report proposed by the examiner.

The complainant is a voluntary association of shippers and receivers of freight at Monroe and West Monroe, La. By complaint, filed July 1, 1919, as amended, it is alleged that defendants' rates on corn and other coarse grains and products thereof taking the same rates, which will hereinafter be referred to as coarse grain, in carloads, from Cairo, Ill., to Monroe and West Monroe, are unreasonable, unduly prejudicial to the preference and advantage of Rayville, La., and in violation of the long-and-short-haul clause of the fourth section of the act. Reparation is asked on behalf of members of the complainant association on shipments moving since June 25, 1918. Rates are stated herein in cents per 100 pounds. The rates to Monroe and West Monroe are the same and hereafter, for convenience, we will refer to Monroe only.

Monroe is served by the Missouri Pacific Railroad, the Arkansas & Louisiana Midland Railroad, and the Vicksburg, Shreveport & Pacific Railway and is located 76 miles west of Vicksburg, Miss., 21 miles west of Rayville, La., and 420 miles from Cairo. Prior to

local rates of the Vicksburg, Shreveport & Pacific from Vicksburg to Rayville and Monroe is 2.5. The spread prior to June 25, 1918, between the rates on coarse grain from Cairo, locally to Monroe and proportionally to Rayville, was 1 cent. If each of the latter rates had been increased only 25 per cent, the spread would be 1.5 cents. Prior to June 25, 1918, the local rate on wheat from Cairo to Monroe was 3 cents higher than the coarse-grain rate. Adding 3 cents to the coarse-grain proportional to Rayville would have made 21 cents and this rate increased 25 per cent would be 26.5 cents or 1 cent less than the present local rate to Monroe.

It should be noted that the proportional rate to Rayville is now 25.5 cents which exceeds the aggregate of the intermediate rates to and from Vicksburg of 25 cents. There is apparently no justification for this situation and it should be removed. The basis for complainant's allegation of a violation of the fourth section is that the proportional rates applying through Monroe to points beyond on the Vicksburg, Shreveport & Pacific Railway were lower than the local rate to Monroe. Such situations have been corrected.

Upon consideration of the record we are of the opinion and find that the present local rate on coarse grains, as hereinbefore described, from Cairo to Monroe is not unreasonable, but that the maintenance of the lower proportional rate from Cairo to Rayville subjects complainants at Monroe to undue prejudice and accords to Rayville undue preference and advantage to the extent that the rate from Cairo, on traffic originating beyond, to Monroe exceeds the rate on like traffic contemporaneously maintained from Cairo to Rayville by more than 1.5 cents per 100 pounds.

The record does not establish that the members of the complainant organization paid and bore the freight charges, as such, on any of the shipments upon which they claim reparation, nor is there any proof of damage sufficient to support an award of reparation under a finding of undue prejudice. Reparation will therefore be denied.

An appropriate order will be entered.

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No. 10415.¹
**ARKANSAS JOBBERS & MANUFACTURERS
 ASSOCIATION**

v.
**DIRECTOR GENERAL, CHICAGO, ROCK ISLAND &
 PACIFIC RAILWAY COMPANY, ET AL.**

Submitted October 20, 1919. Decided February 11, 1920.

Upon complaints attacking the commodity rates on citrus fruit, pineapples, bananas, and coconuts, in carloads, from New Orleans, La. and Mobile, Ala., and on citrus fruit, pineapples, and vegetables from Jacksonville, Fla., to certain points in Arkansas, *Held*:

1. That the rates from New Orleans and Mobile should be prescribed to give greater recognition to relative distances. A proper realignment suggested.
2. That the rates from Jacksonville are not shown to be unreasonable or unduly prejudicial. Complaint dismissed.
3. Carriers whose routes are 15 per cent or more longer than the direct lines authorized to continue lower rates from New Orleans and Mobile to Little Rock and Pine Bluff, Ark., than to intermediate points in Arkansas, provided the rates to such intermediate points do not exceed those herein prescribed. Other fourth section relief denied.

A. D. Beals and *H. M. Gregory* for complainant.

W. M. Taylor for Chamber of Commerce of Pine Bluff, Ark., and
A. R. Bragg for Merchants Freight Bureau of Little Rock, Ark.,
 interveners.

Henry G. Herbel and *James M. Chaney* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, Commissioner:

These cases were the subject of a proposed report by the examiner and exceptions were filed by complainant. The statement of facts, together with the rates and conclusions proposed by the examiner, have been approved, except as herein modified.

These two cases were heard together and will be disposed of in one report. In No. 10415 complainant, an association of Arkansas shippers and commercial organizations, attacks the rates on citrus fruits,

¹ The report also embraces No. 10416, Same *v.* Director General, Alabama & Vicksburg Railway Company, et al., and Portions of Fourth Section Applications Nos. 699, 1578, and 2176.

bananas, pineapples, and coconuts, in carloads, from New Orleans, La., and Mobile, Ala., to 28 destinations in Arkansas,¹ and in No. 10416 those applying on citrus fruits, pineapples, and vegetables from Jacksonville, Fla., and other points taking rates based on Jacksonville, when from beyond, to the same destinations. It alleges that the rates are unreasonable *per se* and unduly prejudicial by comparison with rates on the same commodities from the same points of origin to Little Rock, Pine Bluff, and Fort Smith, Ark.; Memphis, Tenn.; Vicksburg, Miss.; and Monroe, Ruston, Gibbsland, Sibley, and Shreveport, La. The Traffic Bureau of the Chamber of Commerce of Pine Bluff and the Merchants Freight Bureau of Little Rock intervened.

Assigned for hearing with the complaints were those portions of Fourth Section Applications Nos. 699, 1573, and 2176 by which the carriers named as parties thereto ask authority to continue to charge for the transportation of the commodities mentioned from New Orleans, Mobile, and Jacksonville to Little Rock and Pine Bluff rates which are lower than those contemporaneously maintained on like traffic to intermediate points.

NO. 10415.

The tariffs naming the rates to the Arkansas destinations are governed by the western classification, which classifies grapefruit, lemons, limes, oranges, pineapples, and bananas third class and coconuts fourth class, in carloads. The traffic, however, moves on commodity rates that are materially lower than the class rates. With but few exceptions the rates from New Orleans and Mobile are the same.

The rates from New Orleans to representative stations mentioned in the complaint are stated in the following table, together with the short-line distances:

Destinations.	Miles.	Oranges, lemons, pine- apples, bananas.	Coconuts.
Points in eastern and central Arkansas:			
Eudora.....	315	50	44
Arkansas City.....	357	50	44
Pine Bluff.....	412	50	44
Little Rock.....	454	50	44
Hot Springs.....	458	70	64
Forrest City.....	441	50	44
Newport.....	515	50	44
Blytheville.....	466	50	44
Memphis, Tenn.....	396	44	26

¹ The points named in the complaint are: Arkansas City, Batesville, Blytheville, Calico Rock, Camden, Cotter, De Queen, Dermott, El Dorado, Eudora, Fayetteville, For-dyce, Forrest City, Hamburg, Hope, Hot Springs, Jelks, Kensett, Mena, Newport, Nash-ville, Osceola, Prescott, Parkin, Rogers, Siloam Springs, Warren, and Wynne.

² Pineapples, 40 cents

³ Oranges, lemons, 37.5 cents.

Destinations.	Miles.	Oranges, lemons, pine- apples, bananas.	Coconuts.
Points in southern Arkansas and Louisiana:			
El Dorado.....	320	50	44
Camden.....	381	62.5	56.5
Fordyce.....	378	62.5	56.5
Prescott.....	415	70	64
Hope.....	400		
Gibbsland, La.....	294	47.5	47.5
Shreveport, La.....	317	41.5	41.5
Points in northern and western Arkansas:			
Batesville.....	544	66.5	60
Calico Rock.....	599	82.5	76.5
Cotter.....	639	87.5	81.5
De Queen.....	435	62.5	56.5
Mena.....	496	62.5	56.5
Fort Smith.....	574	62.5	56.5
Fayetteville.....	638	81.5	56.5
Rogers.....	667	81.5	56.5
Siloam Springs.....	639	81.5	62.5

¹ Pineapples, 54 cents.

² Pineapples, 79 cents.

It will be observed that a blanket adjustment obtains in eastern Arkansas from the southeastern corner of the state to the north-eastern corner and extending into the interior as far as Little Rock. The 50-cent rate on oranges and bananas to Eudora, for example, 315 miles from New Orleans, applies also to Blytheville, 466 miles, and to Newport, 515 miles, from New Orleans. Generally speaking, the territory over which this rate applies is that part of Arkansas on and east of the lines of the Missouri Pacific extending through Monroe, La., and McGehee, Ark., from Arkansas City to Little Rock, and from Little Rock through Walnut Ridge, Ark. South and west of the territory described the rates grade up as the distances from Memphis increase, due to the fact that originally the traffic moved through Memphis. At Fort Smith, on the western border of the state, the rate on oranges, bananas, and pineapples is 62.5 cents, and on coconuts 56.5 cents. These rates apply also to Mena and De Queen, on the Kansas City Southern Railway, 84 miles and 139 miles, respectively, south of Fort Smith, except that the rate on pineapples to De Queen is 54 cents. Traffic to those points would move north through Texarkana. To Fayetteville and Rogers, in northwestern Arkansas north of Fort Smith, the Kansas City rates of 81.5 cents on oranges and bananas, 79 cents on pineapples, and 56.5 cents on coconuts apply.

Batesville, Calico Rock, and Cotter, points mentioned in the complaint, are located on the line of the Missouri Pacific extending northwest from Diaz, Ark., which is in the 50-cent group. Batesville is 544 miles from New Orleans and takes rates of 66.5 cents on oranges, pineapples, and bananas, and 60 cents on coconuts. The rates to Calico Rock, 55 miles beyond Batesville, are 82.5 cents on 57 I. C. C.

tropical fruits and 76.5 cents on coconuts. The rates to Carthage, Mo., a more distant point on the same route, are 81.5 cents on oranges and bananas, 79 cents on pineapples, and 62.5 cents on coconuts. It will be noted, therefore, that the provisions of the fourth section are not observed in the adjustment of rates to Calico Rock. The departures are more pronounced at Cotter, a few miles west of Calico Rock, to which points rates of 87.5 cents and 81.5 cents apply, respectively, on tropical fruits and coconuts. Defendants state that the rates to these points should be readjusted so as not to exceed those to the more distant point.

Complainant refers particularly to the rates to Camden, Fordyce, Hope, and Prescott, all of which points are intermediate to Little Rock or Pine Bluff via one or more routes but which take rates substantially higher than those in effect to the latter points. Camden is served by the Missouri Pacific, the St. Louis Southwestern, hereinafter called the Cotton Belt, and the Chicago, Rock Island & Pacific, hereinafter called the Rock Island. The rate on tropical fruit from New Orleans to Camden is 62.5 cents, and on coconuts 56.5 cents. The short-line distance is 381 miles by way of Ferriday, La., and the Missouri Pacific, but a more satisfactory route is said to be via Alexandria, La., and the Missouri Pacific, 391 miles. The distance from New Orleans to Camden by way of Shreveport and the Cotton Belt is 423 miles and by way of Alexandria and the Rock Island over 500 miles. Traffic to Pine Bluff, when routed over the Cotton Belt, through crossings south of Memphis, would move through Camden. Pine Bluff is 412 miles from New Orleans via Ferriday and the Missouri Pacific, the short line, and 490 miles via Shreveport and the Cotton Belt. The latter route is therefore more than 15 per cent longer than the direct route. The route of the Missouri Pacific to and through Camden may also be used for traffic from New Orleans destined to Little Rock. The distance to Little Rock via this route would be 496 miles, or 42 miles longer than the short route of the Missouri Pacific.

Fordyce lies between Camden and Pine Bluff on the Cotton Belt and between El Dorado and Little Rock on the Rock Island, and the rates thereto are the same as those in effect to Camden, or 12.5 cents higher than the Little Rock-Pine Bluff rates. The short-line distance to Fordyce is via Alexandria and the Rock Island, 378 miles, as compared with 452 miles by way of the Cotton Belt through Shreveport. The distance to Little Rock via the Louisiana Railway & Navigation Company to Alexandria thence Rock Island is 461 miles, or but 7 miles longer than the short-line distance of 454 miles by way of the Texas & Pacific Railway to Ferriday and Missouri Pacific beyond.

Hope and Prescott are located on the main line of the Missouri Pacific extending from Texarkana through Little Rock to St. Louis. Hope is also served by the Louisiana & Arkansas Railway, which, in connection with the Louisiana Railway & Navigation Company, forms the short route of 400 miles. No rates are published on tropical fruit or coconuts from New Orleans to Hope, but to Prescott, 15 miles north thereof, rates of 70 cents and 64 cents, respectively, are in effect. Traffic to Little Rock via the Louisiana & Arkansas and Missouri Pacific would pass through Prescott and points taking rates of 70 cents, 62.5 cents, and 56.5 cents on tropical fruit. The distance to Little Rock over this route is 512 miles, less than 15 per cent longer than the short line.

Complainant suggests that class C rates be established on tropical fruits from New Orleans to all points in Arkansas because the commodity rates to Little Rock and Fort Smith, and to points in northern Louisiana, are approximately the same as the class C rates under the scale prescribed in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, for corresponding distances. The short-line distance from New Orleans to Little Rock is, as stated, 454 miles and for that distance the class C rate under the scale mentioned, for a movement over one line, would be 48 cents, or 2 cents lower than the present commodity rate to Little Rock. In making these comparisons between the commodity rates and the distance scale rates complainant has assumed that the commodity rates to the alleged preferred points are reasonable and should be taken as the standard for rates elsewhere in Arkansas.

Defendants, on the other hand, contend that considering the class of traffic the rates to all points in Arkansas are too low and should be increased to the full classification basis. Since bananas constitute the principal traffic under consideration much of the record was devoted to a showing of the unusual expenses encountered in the handling of that commodity, such as special facilities at the ports for transferring the fruit to the cars, the expense of cleaning and scrubbing the cars and providing floor racks, and the expedited service required. These expenses have been fully discussed in previous reports, particularly *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. Co.*, 13 I. C. C., 620, and *Rates on Bananas from Gulf Ports*, 30 I. C. C., 510, and therefore need not be detailed here.

As indicating that the rates to Arkansas points are not unreasonable defendants point out that the rate on bananas from New Orleans to Topeka, prescribed in *Rates on Bananas from Gulf Ports*, *supra*, was 87 per cent of the third-class rate, whereas the commodity rate to Little Rock is but 61 per cent of the present third-class rate of 81.5 cents in effect at the time of hearing. They also show that the

commodity rates to representative points in different parts of the state range from 50 per cent to 71 per cent of the third-class rates, a lower percentage relation than is the case with rates on bananas prescribed by the Commission in various proceedings dealing with that commodity.

While the complaint alleges that the rates to the points therein named are unreasonable *per se*, the principal grievance is the alleged undue prejudice to shippers located elsewhere than at Little Rock, Pine Bluff, and Fort Smith, and northern Louisiana points. The contention is that under a graded system of rates competition would be promoted and that the traffic, which now moves almost wholly to the alleged preferred points, would be diverted in part from the larger jobbing centers to the smaller points where complainant's members are located. The defendants estimate that during the year 1918 the movement of bananas from New Orleans to Little Rock amounted to about 200 cars. According to a representative of the Merchants Freight Bureau of Little Rock, intervener, that estimate is much too low. During the same period 49 cars of bananas moved from New Orleans to Pine Bluff and 99 cars from New Orleans and Galveston to Fort Smith. There was no movement to any of the points represented by the complainant, as named in the complaint, except El Dorado, which received 24 cars from New Orleans. Forrest City and Paragould, the latter point not named in the complaint, received 3 cars and 7 cars, respectively. The relatively insignificant movement to the smaller jobbing points is attributed by complainant to the rate adjustment and by defendants to the small population and the lack of cold-storage facilities. El Dorado, Forrest City, and Paragould, and possibly two or three other points in Arkansas, exclusive of Little Rock, Pine Bluff, and Fort Smith, are the only points now equipped to care for perishable fruit in carload quantities, but complainant argues that under an adjustment which would permit the jobbers at the smaller towns to compete upon equal terms with those at the large distributing points other cold-storage plants would soon be established.

It is the duty of the carriers to afford equal opportunity to all who desire to employ their services and the fact that the towns represented by the complainant are small and not well equipped to care for these particular commodities does not relieve them of that duty. Under the present rate adjustment it costs the jobber at Fordyce, for example, \$25 more for the transportation of a carload of bananas, at the minimum weight of 20,000 pounds, than it would cost the jobber at Little Rock for the same car although Fordyce is nearer New Orleans and directly intermediate to Little Rock. Similarly, the jobber at Hot Springs would be required to pay \$40 more

for a carload of bananas for a difference in distance of but 4 miles. The minimum charge for the transportation to Prescott is \$140 and to Fort Smith \$125, yet Prescott is 159 miles nearer New Orleans. The rate to Shreveport, La., for a distance of 317 miles is 41.5 cents, whereas the rate to points in southern Arkansas for similar distances is 50 cents. There are no differences in the conditions of transportation such as to justify these disparities in rates and charges.

An examination of the record leads to the conclusion that the commodity rates on citrus fruits, bananas, pineapples, and coconuts from New Orleans and Mobile to points in Arkansas should be re-adjusted to afford greater recognition to relative distances. Giving due consideration to the claims of the defendants that the expenses incident to the transportation of this class of traffic are greater than those of ordinary traffic, and that the revenue derived from such transportation, as a whole, ought not to be impaired, we find that the following is, and for the future will be, a reasonable scale:

Distances from New Orleans.	Citrus fruits, bananas, pineapples.	Coconuts.	Distances from New Orleans.	Citrus fruits, bananas, pineapples.	Coconuts.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
275 and over 250.....	46	40	500 and over 450.....	62	56
300 and over 275.....	48	42	550 and over 500.....	65	59
350 and over 300.....	50	44	600 and over 550.....	68	62
400 and over 350.....	54	48	650 and over 600.....	71	65
450 and over 400.....	58	52	700 and over 650.....	73	67

We further find that the rates charged by defendants for the transportation of citrus fruits, bananas, pineapples, and coconuts from New Orleans and Mobile to points on the lines of defendants in southern Arkansas are and for the future will be unduly prejudicial to such points as compared with the rates from the same points of origin to points on the lines of defendants in northern Louisiana to the extent that the rates to the former points exceed those charged to the latter points for similar distances.

NO. 10416.

The following illustrations will suffice to indicate the general level of the rates on fruits and vegetables from Jacksonville of which complaint is made in No. 10416. For comparative purposes the corresponding through class rates are also shown. As hereinbefore stated, citrus fruits and pineapples in carloads are rated third class. By exceptions to the classification vegetables are rated class C. Rates on citrus fruits and pineapples are stated in the tariff in cents per standard box or crate, estimated weight 80 pounds, those on tomatoes, corn, beans, etc., per standard box or hamper, estimated weight 50

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pounds, and on cabbage in cents per 100 pounds, but for convenience all rates will be stated here in cents per 100 pounds. Although the less-than-carload rates are apparently included in the complaint they were not mentioned at the hearing and therefore will not be referred to in this report.

From Jacksonville to—	Citrus fruit.		Pineapples.		Cabbage.		Tomatoes.	
	Commodity.	Class.	Commodity.	Class.	Commodity.	Class.	Commodity.	Class.
Memphis.....	65.5	-----	65	-----	47.5	-----	70	-----
Forest City.....	90.5	85	97	85	64	41.5	85	50
Little Rock.....	90.5	96.5	97	96.5	68.5	41.5	94	84
Pine Bluff.....	90.5	96.5	97	96.5	66.5	41.5	95	84
Hot springs.....	110.5	131.5	116.5	131.5	80	55	104	75
Fordyce.....	103.5	115	108.5	115	76.5	51.5	101	65
Camden.....	103.5	129	103.5	129	80	55	105	71.5
El Dorado.....	90.5	131.5	97	131.5	80	55	105	74
Prescott.....	91.5	135	91.5	135	62.5	62.5	62.5	82.5
Batesville.....	107	91.5	113	91.5	66.5	41.5	95	55
Fort Smith.....	99.5	109	105.5	109	75	50	105	62.5

Jacksonville is in Macon, Ga., territory with respect to rates to the southwest and the general basis for the construction of through rates on vegetables from points in that group to Arkansas and Oklahoma was fully described in *Dawson Produce Co. v. A. C. L. R. R. Co.*, 49 I. C. C., 291. Briefly stated, the rates are made by combination of the so-called "gathering rates" from producing points to Jacksonville and proportional commodity rates from Jacksonville to destination. These latter rates, which are here involved, are made on the lowest combination of proportional rates to the Mississippi River crossings plus the proportions accruing to the lines west of the Mississippi River out of the rates applicable on traffic from Atlanta, Ga. This basis, in so far as it applies to points in Oklahoma, was approved in the case cited.

Complainant expressly disclaims any attack against the propriety of the proportional rates to Memphis, through which crossing, or crossings north thereof, the rates apply on traffic moving by way of the Missouri Pacific, Rock Island, and St. Louis-San Francisco. Rates to points on the Cotton Belt are applicable via any Mississippi River crossing. With respect to oranges, lemons, and other citrus fruit complainant points out that the rate to Hot Springs, 186 miles from Memphis, exceeds that to Memphis by 36 cents a box, equivalent to 45 cents per 100 pounds, while the rate to Pine Bluff, 154 miles from Memphis, is but 20 cents a box, or 25 cents per 100 pounds, higher than the Memphis rate. Fort Smith is 319 miles west of Memphis and for that distance the increase in the rate is 34 cents per 100 pounds, while at Batesville, 149 miles from Memphis, the rate on citrus fruit is 41.5 cents higher than to Memphis. Fordyce, 178

miles from Memphis, is 40 miles south of Pine Bluff and takes a rate of 103.5 cents per 100 pounds on citrus fruit, which is 13 cents higher than the Pine Bluff rate. Apparently traffic to Pine Bluff may be routed by way of the Cotton Belt through crossings south of Memphis, in which event it would pass through Fordyce.

It seems unnecessary to discuss in detail the evidence offered by complainant respecting the rates on fruit and vegetables to other points. Summed up, the whole complaint in this case, as in No. 10415, is that defendants fail to maintain their rates on a uniform mileage basis throughout the state of Arkansas. All of complainant's evidence except certain exhibits relating to car-mile earnings was devoted to establishing that fact. Counsel for complainant stated on brief that if the Commission would prescribe a mileage scale of rates on fruits and vegetables from Jacksonville equivalent to the class C rates established in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, *supra*, the complaint would be satisfied.

As stated, the general basis for rates on fruits and vegetables from Florida points to points in Arkansas and Oklahoma was approved in *Dawson Produce Co. v. A. C. L. R. R. Co.*, *supra*. One of the main contentions in that case was that the proportional rates from Jacksonville were unreasonable because they exceeded the class rates. This contention was not sustained, the Commission finding that the adjustment did not compel Oklahoma vegetable dealers to pay a level of rates higher, in proportion to the kind and measure of service received, than was paid by neighboring dealers in Texas or those in more distant states.

Defendants urge that inasmuch as Memphis is the natural gateway for traffic from Florida to points in Arkansas the logical basis for constructing the through rates is the combination of the proportional rates to Memphis and the class rates beyond. They therefore propose to substitute for their proportions west of the Mississippi River the full class rates from Memphis. While this readjustment would accord greater recognition to relative distances and to that extent meet the views of the complainant, it would result in very material increases in the rates and numerous departures from the fourth section. For example, the proportional rate on citrus fruit from Jacksonville to Little Rock, which is now equivalent to 90.5 cents per 100 pounds, would be increased to \$1.22 on the basis of the present Memphis combination. That rate would be 11 cents higher than the rate now in effect to Oklahoma City.

The record discloses no movement of vegetables or pineapples from Florida points to Arkansas and practically no movement of citrus fruits and the rates are seemingly of but little importance to complainant at this time.

We find that the proof offered does not establish the fact that the rates now in effect are unreasonable or unduly prejudicial and the complaint will be dismissed.

FOURTH SECTION.

As hereinbefore shown, there are certain points in southern Arkansas intermediate to Little Rock and Pine Bluff to which the rates on traffic from the south do not conform to the long-and-short-haul rule of the fourth section. By the applications assigned for hearing with the complaints the carriers ask authority to continue in effect lower rates on fruits and vegetables to Little Rock and Pine Bluff than they contemporaneously maintain on like traffic to the intermediate points. There appear to be no fourth section departures on traffic from Jacksonville except on such traffic as may be routed by way of the Cotton Belt through crossings south of Memphis. The evidence submitted in justification of the present adjustment from New Orleans consisted of a showing of the differences in distances over the various routes.

The short route from New Orleans to both Little Rock and Pine Bluff is by the way of the Texas & Pacific Railway to Ferriday, La., thence Missouri Pacific. There are no departures over this route, the departures occurring on the lines of the other carriers serving Little Rock and Pine Bluff and over other routes of the Missouri Pacific. The Commission has frequently held that where carrier competition is the only influence which has operated to reduce rates to a competitive point the direct lines and those less than 15 per cent longer must observe the fourth section and not charge higher rates to intermediate points. Accordingly, the carriers here concerned whose routes are 15 per cent or more longer than the direct lines to Little Rock and Pine Bluff should be allowed to meet the rates of the direct lines and to continue higher rates to intermediate points, providing the rates to such intermediate points do not exceed those herein proposed, while carriers whose routes are less than 15 per cent longer are not justified in continuing higher rates to intermediate points.

Orders in accordance with the finding herein will be entered.

57 I. C. C.

No. 10451.

P. KOENIG COAL COMPANY

v.

GRAND TRUNK RAILWAY COMPANY OF CANADA,
DIRECTOR GENERAL, ET AL.

Submitted January 17, 1920. Decided March 5, 1920.

Rates on anthracite coal, in carloads, from Coxton, Pa., to Detroit, Mich., found to have been unreasonable. Reparation awarded.

Albert J. O'Conner for complainant.

R. W. Barrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

The complainant, a corporation engaged in the coal business at Detroit, Mich., alleges in its complaint, seasonably filed, that the rates of \$3.85 and \$3.60 per ton of 2,240 pounds, charged, respectively, on numerous carloads of prepared sizes and smaller sizes of anthracite coal, shipped in July, August, September, October, and November, 1918, from Coxton, Pa., to Detroit were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the respective rates of \$3.70 and \$3.45 per ton of 2,240 pounds subsequently established. Reparation only is prayed, the amount asked, however, including an amount equal to the war-revenue tax on the alleged unlawful portion of the freight charges. Except when otherwise indicated, rates throughout this report are stated in amounts per ton of 2,240 pounds.

The shipments in question were routed "Grand Trunk Railway" and moved over the Lehigh Valley Railroad to Buffalo, N. Y., and from that point to destination over the Grand Trunk Railway system. They consisted principally of prepared sizes, though some few consisted of smaller sizes. East of Buffalo the rates were and are 25 cents higher on prepared sizes than on smaller sizes, while west of Buffalo no rate distinction is observed. The rates charged and legally applicable were \$3.85 on the prepared sizes and \$3.60 on smaller sizes, constructed respectively on the Buffalo combination of \$2.35 and \$2.10, respectively, to that point and \$1.50 beyond.

In *Gosline & Co. v. Director General*, 55 I. C. C., 220, decided since the hearing in the present proceeding, the Commission found that the rate of \$3.85 charged on prepared sizes of anthracite coal, in carloads, shipped during August and September, 1918, from various points in the Pennsylvania coal district to Toledo, Ohio, was unreasonable to the extent that it exceeded a subsequently established rate of \$3.70, and awarded reparation upon that basis. The rates from the Pennsylvania mines to Detroit and Toledo are generally the same, and the rate there assailed was also constructed on combination, using components of \$2.35 to Buffalo or the Canadian frontier and \$1.50 beyond. That proceeding involved only rates on prepared sizes, but the history of the rates, the material issues, and contentions of the parties in the respective proceedings are substantially the same, and as those matters are fully set forth, discussed, and determined in the *Gosline Case, supra*, they need not be repeated here. It may be noted, however, that, as appears from that report, during the period the \$3.85 rate was maintained to Toledo in connection with the Michigan Central Railroad and Wabash Railway west of Buffalo, the Pennsylvania lines and their connections maintained a joint rate of \$3.70 from the mines to Toledo, and the combination rate of \$3.70 also contemporaneously applied in connection with the New York, Chicago & St. Louis Railroad beyond Buffalo, that carrier having increased its rate, effective June 25, 1918, only to \$1.35. In the present proceeding it appears, with respect to prepared sizes which may be taken as sufficiently representative in this connection, that during the period the \$3.85 rate was maintained to Detroit the Pennsylvania lines and their connections also maintained a joint rate of \$3.70 to Detroit, but the \$3.85 combination rate applied generally in connection with the lines of other carriers operating from Buffalo to that destination, the rates of those carriers having been increased to \$1.50, effective June 25, 1918. The rate of the Grand Trunk Railway system from Buffalo to Detroit was reduced to \$1.35, effective November 12, 1918.

In the brief filed in their behalf defendants argue that complainant in no event has shown that it has suffered damage by reason of the rates assessed. A similar contention was made in the *Gosline Case*, and is there discussed. It is now well settled that the party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable. *Southern Pac. Co. v. Darnell-Taenzler Co.*, 245 U. S., 531.

McCHORD, Commissioner:

Except as to some unimportant changes, the above is the statement of facts embodied in the proposed report of the examiner which was

served on the parties. Exceptions were filed by the defendants, and the case was orally argued.

The exceptions do not go to the statement of facts in the report, but are mainly based on the contention that the findings are based on those in the *Gosline Case*. If the facts in that case are substantially the same as those here presented, we ought not to make a different finding in this case. To restate the facts here would be unnecessary repetition. The evidence of the main traffic witness for the defendants in the *Gosline Case* was filed as an exhibit in this case without objection. Exception is taken to an award of reparation on the ground that the complainant was not damaged. As stated above, such a contention is not tenable.

Under all the facts and circumstances shown of record, we find that the rates assailed were unreasonable to the extent that they respectively exceeded \$3.70 per ton of 2,240 pounds on prepared sizes and \$3.45 per ton of 2,240 pounds on smaller sizes.

We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable and has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable, and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. We are without power to order refund of war taxes. *Zelnicker Supply Co. v. S. Ry. Co.*, 53 I. C. C., 308.

No. 10445.

THATCHER MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, PENNSYLVANIA RAILROAD
COMPANY, ET AL.

Submitted January 15, 1920, Decided March 5, 1920.

Charges for switching interstate carload traffic between complainant's plant on the Pennsylvania Railroad and that carrier's interchange track with the Baltimore & Ohio Railroad at Kane, Pa., found unreasonable. Reparation awarded.

E. J. Baldwin for complainant.

Henry Wolf Bikelé for defendants other than Kane & Elk Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

In this proceeding complainant, a corporation engaged in the manufacture of milk bottles at Kane, Pa., assails as unreasonable and unduly prejudicial the charges for the movement of interstate traffic, in carloads, between its plant located adjacent to the Pennsylvania Railroad and that carrier's connection with the Baltimore & Ohio Railroad within the city of Kane. Reparation is asked on five shipments which moved between June, 1917, and February, 1918, within the statutory period, and the establishment of a reasonable per car switching charge on such traffic.

The Pennsylvania Railroad interchanges traffic at Kane with the Baltimore & Ohio Railroad. It also connects at the outskirts of Kane with the Kane & Elk Railroad, a short road approximately 4 miles long which has no terminal facilities in Kane proper. There are 11 industries in Kane located exclusively adjacent to the tracks of the Pennsylvania, 4 located exclusively adjacent to the Baltimore & Ohio, and 4 reached by both roads by means of a track built by the Kane Board of Trade. The principal traffic to and from these industries consists of glass products and materials entering into the manufacture thereof, screens and doors, lumber, building brick, gasoline, oil-well supplies, groceries, fruit and produce, flour and feed. Of the tonnage received and delivered on these sidings the Pennsylvania's share is said to be from eight to ten times as great as that of the Baltimore & Ohio.

The shipments arrived at Kane over the Baltimore & Ohio, and, with the exception of one shipment, were so routed by the shipper because of alleged embargoes which precluded movement by way of the Pennsylvania. Defendants state, however, that their investigation shows that while one route by way of the Pennsylvania was embargoed there were other open routes by which the shipments would have arrived at Kane over the Pennsylvania and delivery have been effected at complainant's plant at the flat Kane rate. Defendants admit that under the routing specified in the bill of lading of the excepted shipment complainant was entitled to Pennsylvania Railroad delivery and that a refund is due on account of misrouting. Upon the arrival of the shipments at Kane they were ordered delivered on the siding of complainant. The bills of lading covering two of the shipments called for delivery by the Baltimore & Ohio to the Kane & Elk Railroad, but apparently they were ordered delivered by the Baltimore & Ohio direct to the Pennsylvania for movement to complainant's siding.

The Pennsylvania does not publish what are commonly known as switching charges between its interchange track with the Baltimore & Ohio and industries on its line at Kane but shipments are interchanged at class rates. Complainant's principal inbound shipments consist of soda ash, cullet, sand, and box shooks, which are rated sixth class in carloads. At the time the shipments moved the sixth-class rate between the Pennsylvania's interchange track with the Baltimore & Ohio and complainant's plant was 5 cents per 100 pounds, which rate also applied to the next station beyond. On June 25, 1918, it was increased to 7 cents per 100 pounds pursuant to General Order No. 28 issued by the Director General. Prior to June 25, 1918, the charges for such a movement would frequently amount to \$40 or more per car and at the present time to \$56 or more per car, for a heavy loading commodity like soda ash. Based on a weight of 50,000 pounds, the weight of the shipment of box shooks involved in the claim for reparation, the charges at the 7-cent rate now applicable would amount to \$35 per car. Complainant asks for the establishment of a switching charge of \$4 per car, which it conceives would be reasonable and would be sufficiently low to permit of its being absorbed by the Baltimore & Ohio.

One defense is that the establishment of the switching charge sought would open the terminal of the Pennsylvania to its competitor, the Baltimore & Ohio, which, with but few terminal facilities at Kane, would by the absorption of the switching charges obtain the benefit of the more adequate terminal facilities of the Pennsylvania, while the latter road, although owning the terminals, would lose

the revenue which it might otherwise obtain for the line haul. It is urged that on this ground alone the complaint should be dismissed, particularly in view of the fact that the Pennsylvania has joint-rate arrangements with the Baltimore & Ohio which for the most part give complainant the benefit of the flat Kane rate to and from points on the Baltimore & Ohio; and that it is highly preferable that cars for Pennsylvania delivery originating on the Baltimore & Ohio should for operating reasons be delivered to the Pennsylvania outside of Kane so that they may come into Kane on the Pennsylvania's own tracks. But this is not a case where, as in *Louisville Board of Trade v. L. & N. R. R. Co.*, 40 I. C. C., 679, the carrier has refused to open its terminals to a competing road, for the Pennsylvania actually interchanges traffic with the Baltimore & Ohio at Kane and publishes charges therefor in its tariffs. Having elected to perform this service the charge therefor must be reasonable. *Merchants & Manufacturers Assn. v. P. R. R. Co.*, 23 I. C. C., 474; 32 I. C. C., 434.

The movement of cars from the interchange track to complainant's plant involves a haul of approximately a mile. Together with other cars received from the Baltimore & Ohio they are first moved against the current of traffic to the Pennsylvania's classification yard, which movement under the operation of the manual block system prevents all other movements between the block station located approximately 2 miles east of Kane and the classification-yard limit. After being assembled in the classification yard cars for complainant are moved with the current of traffic to complainant's plant.

Prior to and at the hearing of this case the Pennsylvania offered to establish a switching charge of 2 cents per 100 pounds, or 40 cents per net ton, on the traffic in question, this charge to be in addition to the line-haul rate. But this adjustment is not satisfactory to complainant. In support of its contention that the charges at the class rates as well as those on the basis proposed are unreasonable complainant points out that the 7-cent class rate applies on line-haul movements from Kane for distances of from 15 to 24 miles. It also cites switching charges of \$4 per car maintained by the Pennsylvania on traffic other than coal, coke, and building brick between industries on its tracks at Kane for distances greater than that involved in the movement in question, and reciprocal switching charges of \$4 per car for switching between the Pennsylvania and connecting lines at Sheffield, Pa., and various other points. The Pennsylvania urges that as a reciprocal condition does not exist at Kane charges made on such a basis do not afford a fair measure for comparison. It is stated that within the period of federal control controversies of a similar nature concerning switching at various points in Pennsylvania, including Reading, Harrisburg, Lancaster,

Milton, and Williamsport, have been disposed of by establishing the same charge as it is now proposed to establish at Kane.

Complainant also contends that the Pennsylvania by entering into reciprocal switching arrangements with its connections at other points while refusing to enter into such arrangements with the Baltimore & Ohio at Kane subjects complainant and the city of Kane to undue prejudice and disadvantage. But there is no showing that the situation at these points is the same as at Kane. On the contrary, the Pennsylvania's witnesses testified that the situation at these points is essentially different and that no such interchange arrangement on a low per car basis has been established by the Pennsylvania Railroad at any point where it has a predominant interest comparable to that which it has at Kane.

The complainant also asked for the establishment of a reasonable switching charge between its plant and the Pennsylvania's connection with the Kane & Elk Railroad, but this contention was not urged either upon hearing or brief and will not therefore be considered. Witnesses for the Pennsylvania explain that that carrier handles traffic from and to points on the Kane & Elk under a joint-rate arrangement with the latter road and that there would be no traffic on which such a switching charge would apply.

In several cases in which a somewhat similar situation was presented the Commission has held that a reasonable charge for the service of delivery from one carrier to another should not exceed the line-haul rate by more than 2 cents per 100 pounds. *Merchants & Manufacturers Assn. v. P. R. R. Co.*, *supra*; *Jefferson Milling Co. v. B. & O. R. R. Co.*, 31 I. C. C., 547; *Hooven, Owens, Rentschler Co. v. C., H. & D. Ry. Co.*, 31 I. C. C., 550. The distance, operating difficulties, and other circumstances considered, this would not appear to be an excessive charge for the switching services here in question.

MEYER, Commissioner:

The foregoing is substantially the report proposed by our examiner and served upon the parties. Exceptions were filed by the complainant and oral argument had.

With respect to the misrouted shipment, the record does not disclose what carrier or carriers were responsible therefor. Such carrier should promptly make refund of the additional charges resulting from the misrouting.

Complainant urges that upon the shipments routed in connection with the Kane & Elk Railroad the flat rate to Kane should have been applied and no switching charge assessed. The arrangement between the Pennsylvania Railroad and the Kane & Elk Railroad

whereby no switching charge was applicable applied only on traffic originating at or destined to points on that line. So far as the record discloses, the shipments were switched directly from the Baltimore & Ohio tracks by the Pennsylvania Railroad. If such was the case, complainant was entitled to a reasonable switching charge for the movement. There is no allegation that these shipments were misrouted by the Baltimore & Ohio Railroad and no damage is shown to have resulted from the misrouting, if there was any.

We have carefully considered the exceptions, and upon consideration of the whole record we adopt the foregoing as a part of our report and find that the charges assailed are not shown to have been or to be unduly prejudicial, but that they were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed 40 cents per net ton; that complainant made the shipments as described and paid and bore the charges thereon herein found unreasonable; and that it was damaged thereby, except on the misrouted shipment, to the extent that the charges paid exceeded those that would have accrued had the charge herein found reasonable been in effect and is entitled to reparation with interest. If complainant will comply with rule V of the Rules of Practice, we will consider the entry of an order as to reparation.

An appropriate order will be entered.

57 I. C. C.

No. 10020.

WISCONSIN & MICHIGAN FRUIT & VEGETABLE
JOBBER ASSOCIATION

v.

AHNAPEE & WESTERN RAILWAY COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted November 2, 1919. Decided March 9, 1920.

In view of the changed situation, brought about by Perishable Protective Tariff No. 1, I. C. C. No. 6, which became effective on February 28, 1920, subsequent to the hearing in this proceeding, and which was considered in *Perishable Freight Investigation*, 53 I. C. C., 449, complaint dismissed.

F. M. Elkinton, F. D. Hubbard, and H. N. McEwen for complainant.

C. H. Rodehaver for National Basket & Fruit Package Manufacturers Association, intervenor.

A. P. Humburg, R. H. Widdicombe, J. N. Davis, Blewett Lee, J. C. Davis, O. W. Dynes, F. M. Miner, A. H. Lossow, C. A. Burg, H. G. Herbel, N. S. Brown, H. A. Scandrett, W. F. Evans, T. J. Norton, K. F. Burgess, W. T. Hughes, R. M. Shaw, S. H. Strawn, and Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

EASTMAN, *Commissioner*:

Complainant, an association of jobbers and wholesalers of fruits, vegetables, and other products of the soil, alleges that the stated refrigeration charges assessed on carload shipments of berries, domestic fruits, melons, and vegetables between points in western trunk line territory, published in agent Boyd's tariff I. C. C. No. A-832, are unreasonable, in violation of section 1 of the act to regulate commerce, and in excess of charges published and assessed for similar services performed in connection with the transportation of other perishable commodities under substantially similar circumstances and conditions, in violation of section 2. We are asked to prescribe just and reasonable charges for the future. By supplemental complaint the Director General of Railroads was made a party defendant. Two hearings have been had.

Prior to June 1, 1917, refrigeration charges in the territory here concerned were \$3 per net ton of ice and 40 cents per 100 pounds of salt, when supplied at Chicago or Corwith, Ill., and 12½ and 40 57 I. C. C.

cents per 100 pounds of ice and salt, respectively, when supplied at other points. On that date stated charges per car were established in lieu of the former bases, except that from Chicago northbound they did not become effective until September 20, 1917, and that on February 1, 1918, they were somewhat reduced in amounts. While the complaint is broader in scope, the relief outlined in the brief is confined to the charges applicable from Chicago to points in Wisconsin and the upper peninsula of Michigan and to Duluth, Minn., and from St. Paul and Minneapolis, Minn., to the northwestern section of Wisconsin and to Duluth. The line-haul rates are not brought in issue, the complaint being directed solely to the refrigeration charges.

A proposed report in which the charges assailed were found to have been justified was prepared by the examiner and served upon the parties. No exceptions thereto were filed but it was deemed desirable to delay the disposition of the case pending the outcome of our investigation, made at the request of the Director General of Railroads, concerning his proposed Perishable Protective Tariff No. 1. The conclusions which we reached in that investigation and our advice and recommendations to the Director General are stated in our report in *Perishable Freight Investigation*, 56 I. C. C., 449.

Complainant's evidence relates principally to movements from Chicago to points in Wisconsin and the upper peninsula of Michigan for distances not exceeding 450 miles, and apparently averaging in the neighborhood of 275 miles. The shipments are mainly mixed carloads of fruits and vegetables obtained for the most part from cars arriving in Chicago under ice, but in part from the open market. The lading is, therefore, wholly or partially precooled and less ice is required than would otherwise be necessary. Most of the cars, also, are iced at the team tracks where they are loaded, without switching to icing stations. Under the arrangement prevailing prior to September 20, 1917, shippers directed the icing of the cars and complainant's witnesses considered them better qualified than carriers to determine the amount of ice necessary, having in mind weather conditions, length of haul, and the character of the commodity.

An exhibit filed by one of the complaining shippers shows that 12 cars moving a distance of about 200 miles from Chicago to Green Bay, Wis., during the summer of 1917, were initially iced with from 2 to 4½ tons of ice, for which charges of from \$6 to \$13.95 were assessed, and were not re-iced in transit. Two of the cars arrived at destination with no ice left, while the bunkers of the remainder were from one-fifth to two-fifths full. Under the tariff assailed stated refrigeration charges applied to grouped points in the terri-

tory in question, roughly as follows: \$30 to southeastern Wisconsin, \$35 to southwestern and central Wisconsin, \$40 to northern Wisconsin and to Menominee, Mich., and \$42.50 to the upper peninsula of Michigan.

In justification of the large increase in charges effected by this tariff defendants introduced evidence showing the great advance in the cost of ice and enumerating other factors of expense which, they claim, enter into the cost of refrigeration service and should be taken into consideration in determining reasonable refrigeration charges. These factors, which we discussed at length in *Perishable Freight Investigation, supra*, are chiefly ice haulage, supervision, so-called "bunker damage," extra switching, and an allowance for hazard and profit. In the instant case defendants rely very largely, so far as these costs are concerned, upon our findings in *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17, where much longer hauls were involved, and offered little evidence directly related to the traffic in question. In his proposed report, however, the examiner reached the conclusion, to which no exceptions were taken, that the estimates of these items of expense could be materially reduced in amount and still the total costs would exceed the charges assailed.

Upon February 28, 1920, Perishable Protective Tariff No. 1, I. C. C. No. 6, became effective, naming, among other charges, stated refrigeration charges in section 2 upon fruits and vegetables for country-wide application between designated origin and destination groups. The basis for complainant's allegation of unjust discrimination, the assessment of stated refrigeration charges upon its traffic while the charges on similar traffic in certain other territories were upon the cost-of-ice basis, is clearly eliminated by this tariff. The new stated charges between Chicago and points in Wisconsin and Michigan, however, are higher than those which complainant assailed.

In *Perishable Freight Investigation, supra*, while expressing hesitation in reaching conclusions, in view of the character of the evidence submitted, it was stated that we did not find that the charges proposed in section 2, which have since become effective, were unreasonably related to the probable future cost of the service so far as the longer hauls were concerned. In the case of short-haul traffic "covering distances up to, say, 500 miles" we expressed the judgment that the charges proposed were "in excess of the probable future cost of service, including a moderate allowance for hazard and profit," but stated that the information was insufficient to enable us to specify amounts which would be reasonably related to cost. In connection with these charges, however, we recommended a new rule

enabling shippers who do not require re-icing in transit to direct the initial icing, paying at the tariff rate per ton for the ice so supplied, or providing it themselves, and paying to cover the other factors of expense an additional charge ranging from a minimum of \$5 for hauls within a single origin group to 20 per cent of the stated charges for the longer hauls. This rule, which was adopted and made rule No. 240 of the tariff which became effective on February 28, 1920, reads as follows:

(A) When carload shipments of fruits, vegetables, berries, melons, or other perishable freight to which this section is applicable, are forwarded through to destination under instructions "Do not re-ice," (see Rules Nos. 130 and 135), the carrier will initially ice such car in the manner and at charges provided in section No. 4, or permit the shipper at his election to perform such icing, but an additional charge will be made which shall be \$5 per car if the journey is confined within the limits of a single origin group, \$7.50 if it is confined within the limits of two origin groups, and in all other cases 20 per cent of the stated refrigeration charge which would otherwise be applicable.

(B) If, on instructions from shipper, owner or consignee, any car handled under the provisions of this rule is re-iced before arrival in the terminal train yard serving the final destination, such car will be handled under full refrigeration from such point of re-icing. In such case the additional charge levied under paragraph (A) will be based upon the journey from point of origin to point of re-icing and a full stated refrigeration charge will be applied from point of re-icing to final destination. If, on instructions from shipper, owner or consignee, any re-icing is performed after arrival of the car in terminal train yard serving the final destination, the charge for ice so supplied will be made on basis of charges shown in section No. 4, and this will be in addition to all other charges.

The evidence in the instant case indicates that re-icing in transit is not generally required on the bulk of the shipments in which complainant is chiefly interested. By taking advantage of rule No. 240, therefore, complainant's members will find it possible in many, and perhaps in most, instances to secure refrigeration service for materially less than the stated charges, under an arrangement similar to the one which prevailed prior to September 20, 1917, except for the additional charge covering other factors of expense. Whether or not the present stated charges are reasonable, particularly for the shorter distances, it is obvious that this rule No. 240 has materially changed the situation to which the record in the present proceeding was directed, and that upon this record no finding can well be made in regard to the reasonableness of the charges which complainant's members will pay for refrigeration service upon the traffic in question. A fair trial of the new tariff and its charges is desirable, and under the circumstances the complaint will be dismissed. An appropriate order will be entered.

No. 10723.

COLORADO FUEL & IRON COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted November 25, 1919. Decided March 9, 1920.

Rates on iron and steel articles, in carloads, from Minnequa, Colo., to Pacific coast points found unduly prejudicial to the extent that they exceed 77 per cent of the rates contemporaneously maintained from Chicago, Ill., to the same destinations.

Fred Farrar for complainant.

B. W. Scandrett, J. L. Coleman, J. G. McMurry, T. J. Norton,
and *Charles Donnelly* for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

A report was proposed by the examiner to which the complainant filed exceptions. With some modifications the statement of facts and conclusions proposed are made the basis of this report.

The complainant corporation manufactures iron and steel articles at Minnequa, near Pueblo, in the state of Colorado. By complaint filed June 25, 1919, it alleges that the carload rate on iron and steel articles,¹ as described in the complaint, from Minnequa to Pacific coast points since June 25, 1918, has been 94 cents per 100 pounds, a differential of 18.5 cents under the rate of \$1.125 contemporaneously maintained from Chicago, Ill.; that the average distance from Minnequa is 65 per cent of the average distance from Chicago, whereas the Minnequa rate is 83.5 per cent of the Chicago rate; that the differential of 18.5 cents is unreasonable; and that the present rate from Minnequa is unduly prejudicial to complainant and unduly preferential of its competitors at Chicago and east thereof in violation of section 3 of the act to regulate commerce, and section

¹ The articles included in the complaint are those named in items 2795, 2805, 2815, 2855, 2860, 2975, 3015, 3035, 3040, 3080, 3085, 3475, 3480, 3605, 3920, and 3930 of transcontinental westbound tariff 1-Q, I. C. C. No. 1048 of R. H. Countiss, agent, and also those referred to and described in the following items: 3450, 3460, 3470, 3510, 3515, 3642, 3675, 3680, 3700, 3740, 3745, 4120, 4125, 4240, 4505, and 4510 of transcontinental westbound tariff 4-O, I. C. C. No. 1049 of R. H. Countiss, agent.

10 of the federal control act. The reasonableness of the rate itself under section 1 of the act to regulate commerce is not attacked. We are asked to establish from Minnequa to Seattle, Wash.; Portland, Oreg.; San Francisco and Los Angeles, Calif., hereinafter collectively termed the Pacific coast points, a rate which shall not exceed 75 per cent of the rate contemporaneously maintained from Chicago. Rates will be stated in amounts per 100 pounds.

Complainant's plant at Minnequa is extensive and includes blast and open-hearth furnaces, rolling and wire mills, and other departments for the manufacture of iron and steel articles. The principal raw materials used are iron ore, scrap iron and steel, limestone, coke and coal, aggregating, in 1917, about 3,500,000 tons. The daily productive capacity is from 1,800 to 2,000 tons of pig iron and about 2,000 tons of finished steel. The metal output is about 60 per cent steel rails, 20 or 25 per cent wire, nails, and various other products made of wire, and from 15 to 20 per cent steel billets, bars, other finished steel products, and cast-iron pipe. The total finished product marketed will average about 500,000 tons per annum. Complainant does not manufacture structural steel. It employs an average of 6,000 men at the Minnequa plant.

This plant is directly served by the Colorado & Wyoming Railway, an industrial road controlled by complainant, having trunk line connections with the Atchison, Topeka & Santa Fe, Denver & Rio Grande, and Colorado & Southern railroads at Pueblo about 2 miles distant. All outbound traffic is waybilled from Minnequa by the Colorado & Wyoming, and prior to federal control was about equally divided between these three trunk lines, although the routing was largely contingent on car supply.

Practically all the heavy rails produced are sold to railroads entering Colorado or having lines west of the Missouri River. Other products, including light rails, are marketed west of that river, some 10 per cent in Colorado, about 15 per cent in states adjacent to Colorado, and the remaining 75 per cent, or the bulk of the metal output other than heavy rails, is about equally divided between intermountain territory and the Pacific coast, from which a small part is exported. The Pacific coast market is a necessary outlet for the surplus product of complainant. Very little is sold east of Colorado and the sales at Missouri River points are negligible.

When complainant was organized in 1892 it had no Pacific coast market, the freight rates being prohibitive, it is said. In *Colorado Fuel & Iron Co. v. Southern Pacific Co.*, 6 I. C. C., 488, decided November 25, 1895, we found that the rates on iron and steel articles to San Francisco from Pueblo should not exceed 75 per cent of the contemporaneous rates from Chicago, and complainant then sought

that market. Our tariff files show that the 75 per cent rate from Minnequa to the Pacific coast points published in 1902 was in effect about two years, and that on January 18, 1904, the rate from Minnequa was made a flat differential of 15 cents under the Chicago rate. This differential continued in effect until June 25, 1918, a period of over 14 years. The rates were then increased 25 per cent under General Order No. 28 of the Director General of Railroads to \$1.125 from Chicago and 94 cents from Minnequa,¹ the present rates resulting in a differential of 18.5 cents.

Complainant competes with all the large manufacturers of steel in the east, the industry centering at Pittsburgh, Pa., with Chicago a close rival. It also competes in the southwest with the mills at Birmingham, Ala. Its plant at Minnequa is the only one west of Chicago where iron and steel are manufactured from the raw material, except the plant of the United States Steel Corporation at Duluth, Minn. A small mill at Midvale, Utah, near Salt Lake City, operates open-hearth furnaces and manufactures a limited number of steel products from pig iron and scrap. The production of this mill is relatively light but it has some effect on prices. There are also two or three small steel plants at San Francisco, one at Seattle, and some small rolling mills at Kansas City, Mo. Generally speaking, the selling prices, which all steel producers must meet, are made in Pittsburgh or Chicago.

Complainant contends that the cost of producing steel at Minnequa is higher than at Pittsburgh or Chicago, primarily because of difference in the grade of material used, and that the 15-cent differential three or four years ago was better for complainant, with the lower cost of production then prevailing, than the 18.5-cent differential is now. We have repeatedly held that we may not require carriers to equalize natural advantages, such as location, cost of production, and the like.

On behalf of defendants it is said that from Minnequa to all destinations named the hauls are entirely through regions of low traffic density which present many serious operating difficulties, while the hauls westbound from Chicago are partly through a country of high traffic density, free from serious operating difficulties, and partly through country which is sparsely settled and mountainous; and that the difficulty in determining a proper relationship between the rates from Chicago and those from Minnequa grows out of these similarities and differences in transportation conditions. The dis-

¹ The rate on sucker rods from Minnequa to the four Pacific coast points is \$1.045; on ferromanganese, ferrosilicon, pig iron, and spiegeleisen the rates are: From Minnequa to the four Pacific coast points, 57.5 cents; from Chicago to Seattle and Portland, 69 cents; to San Francisco and Los Angeles, 75 cents.

tance from Chicago to each of the four Pacific coast points is practically the same. From Minnequa the distances vary appreciably. San Francisco, the point most distant from Chicago, is some 80 miles farther than Seattle, the nearest point; Seattle, the most distant from Minnequa, is 365 miles farther than Los Angeles, the nearest point. The distance from Chicago exceeds that from Minnequa by 508 miles to Seattle, and by 936 miles to Los Angeles. Defendants contend that rates from Chicago to the four Pacific coast points would naturally be the same because of similarity in distance, without regard to carrier or market competition, and that from Minnequa the rate to Los Angeles would not be the same as the rate to Seattle if it were not for carrier or market competition. In brief, the rate from Chicago to all four points is the same because of distance, and from Minnequa because of competition. This being so, defendants question whether it can be said that Minnequa's differential of 18.5 cents under Chicago unduly prejudices Minnequa.

Complainant and defendants introduced in evidence figures showing these distances and the relationship of the distances to the rates. To each of the Pacific coast points the percentage of the rate greatly exceeds the percentage of the distance. Complainant does not ask that the rates be made proportional to the distance, but contends that with due allowance for difference in the operating conditions the Minnequa percentage of the Chicago rate should more nearly approximate its percentage of the distance. The average short-line distance from Minnequa to the four Pacific coast points is 1,473 miles, or 66 per cent of the average short-line distance from Chicago. The rate from Minnequa is 94 cents, or 83.55 per cent of the rate from Chicago. Complainant asks for a rate from Minnequa not exceeding 75 per cent of the rate from Chicago. That percentage of the present rate from Chicago would be 84.5 cents, or 28 cents under the Chicago rate.

The 94-cent rate also applies from Kansas City and Omaha. Their average short-line distance to the Pacific coast points is 1,869 miles, or 396 miles more than from Minnequa and 362 miles less than from Chicago. The advantage in distance of these Missouri River points over Chicago is reflected by a spread of 18.5 cents in the rate, while Minnequa's advantage over the river points is accorded no recognition. Duluth and St. Paul take the same 94-cent rate as Minnequa to Seattle and Portland. It seems clear that Minnequa should not be grouped with the points now taking 94 cents. From Midvale, Utah, a rate of 50 cents applies to Seattle and Portland for an average distance of 1,026 miles, or 548 miles less than from Minnequa to the same points; to San Francisco and Los Angeles, an average distance of 812 miles, or 566 miles less than from Minnequa, the rate is 77.5 cents.

Defendants urge that a flat differential is more satisfactory than a percentage differential because the relationship is not changed by fluctuation in the rates, that operating conditions as well as distance must be considered in fixing the differential, and that the difference in distance and the difficult transportation conditions west of Minnequa justify the existing differential of 18.5 cents. The following table shows the rates in effect from January 1, 1909, to the present time:

Date effective.	From Chicago. (Average distance, 2,231 miles.)		From Minnequa. (Average distance, 1,473 miles.)			
	Rate.	Revenue per ton- mile.	Rate.	Differ- ential under Chicago.	Per cent of Chicago rate.	Revenue per ton- mile.
	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Mills.</i>
January 1, 1909.....	80	7.17	65	15	81.25	8.83
July 15, 1915.....	55	4.97	40	15	72.73	5.43
December 30, 1916.....	65	5.83	50	15	76.92	6.79
March 15, 1918.....	90	8.07	75	15	83.33	10.18
June 25, 1918 (and still in effect).....	112.5	10.09	94	18.5	83.55	12.76

The evidence is directed to the existing rate relationship rather than to the rates themselves, the chief contention being that the rate from Minnequa under the 18.5-cent differential results in undue preference of competitors at Chicago and east thereof to the undue prejudice and disadvantage of complainant.

The question before us is whether the rate from Minnequa is properly related to the rate from Chicago. Complainant's position is somewhat exceptional. It is the only producer of these articles in the vast territory lying between the Missouri River and the Utah common points. It is the only shipper on the Minnequa rate. It complains of undue prejudice which it shows would be better removed by a percentage differential than by a flat differential. The recommendation in the proposed report was that we find the rate assailed unduly prejudicial to the extent that it exceeds 80 per cent of the rate from Chicago. Complainant excepted to the percentage, stating that it believed the evidence justified 75 per cent, but that it had nothing to add in this respect to its brief and argument. Defendants filed no exceptions. Without attempting to decide in a general way between the respective merits of the two kinds of differential we feel warranted in prescribing a percentage differential in this case.

Although distance is far from being the determinative criterion, the contrast between 66 per cent of distance and 83.55 per cent of rate is marked. For a stretch of greater traffic density the spread in the rates to the Pacific coast points between Chicago and New York, a

distance of 912 miles, is 25 cents. The average difference in distance to those points as between Chicago and Minnequa is less, but the density is less and the proportion of operating difficulties greater. The above table shows that for the nine years preceding March 15, 1918, Minnequa's rates averaged approximately 77 per cent of those from Chicago. At the present rate 77 per cent would yield a differential of 26 cents, and perhaps more closely represent the proper relation than the 75 per cent prescribed by us 25 years ago.

Upon the record we are of opinion and find that the rate maintained by defendants on iron and steel articles, in carloads, from Minnequa to the four Pacific coast points under consideration is, and for the future will be, unduly prejudicial to complainant at Minnequa and unduly preferential of its competitors at Chicago and east thereof, in violation of section 3 of the act to regulate commerce and section 10 of the federal control act, to the extent that it exceeds or may exceed 77 per cent of the rate contemporaneously maintained by defendants on the same commodities, in carloads, subject to the same carload minima, from Chicago to the same destinations. Nothing in this report should be construed as authorizing any departure from the provisions of the fourth section of the interstate commerce act.

An appropriate order will be entered.

57 I. C. C.

No. 10663.

CHARLES BOLDT COMPANY

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted December 31, 1919. Decided March 20, 1920.

Rates on glass sand, in carloads, from Ottawa, Ill., and related points to Huntington and West Huntington, W. Va., between November 1, 1917, and October 17, 1918, found to have been unreasonable. Reparation awarded.

W. B. Snell, jr., Francis B. James, E. E. Williamson, and Ewing H. Scott for complainant.

W. P. Tingley for Huntington Tumbler Company, intervener.

J. S. Patterson and W. S. Bronson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

Complainant is engaged at Huntington, W. Va., in the manufacture, among other articles, of glass bottles and containers. Much of the glass sand used in its operations is drawn from pits at and near Ottawa, Ill. By complaint filed May 24, 1919, it alleges that the rates charged by defendants between November 1, 1917, and October 18, 1918, for the transportation of glass sand, in carloads, from Ottawa to Huntington were unjust and unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. The complaint was amended at the hearing to include as additional points of origin Millington, Utica, and Wedron, Ill., sand-producing points in the Ottawa group, and as an additional destination West Huntington, W. Va. Reparation is asked.

On July 9, 1919, the Huntington Tumbler Company, a corporation engaged in the manufacture of glassware at Huntington, filed a petition of intervention in which it alleges that it has been charged the same rates, and asks reparation on the same basis, as complainant. Rates are stated herein in amounts per net ton.

Ottawa is located about 85 miles southwest of Chicago on the Chicago, Rock Island & Pacific and the Chicago, Burlington & Quincy railroads. Huntington is on the south bank of the Ohio

River, 161 miles east of Cincinnati, Ohio, on the Chesapeake & Ohio and the Baltimore & Ohio railroads. The short-line distance from Ottawa to Huntington is 463.5 miles by way of the Chicago, Rock Island & Pacific to Seneca, Ill., Cleveland, Cincinnati, Chicago & St. Louis to Cincinnati, thence Chesapeake & Ohio.

The rates assailed and sought follow:

Periods.	Rates charged.	Rates sought.
Nov. 1, 1917, to May 21, 1918.....	\$2.82	\$2.40
May 22, 1918, to June 24, 1918.....	3.20	2.80
June 25, 1918, to Oct. 17, 1918.....	3.40	3.00

This proceeding, to a certain extent, grows out of our decision in *Federal Glass Co. v. C., R. I. & P. Ry. Co.*, consolidated with *Boldt Co. v. C., R. I. & P. Ry. Co.*, 33 I. C. C., 8, decided February 2, 1915. We there prescribed reasonable maximum rates on glass sand from Ottawa to a number of points in Ohio. A rate of \$2.40 to Zanesville, 434 miles from Ottawa, was found unreasonable to the extent that it exceeded \$2.20, and a reduction of 20 cents was likewise ordered in the rate of \$2.60 then in effect to Barnesville, 494 miles from Ottawa.

In May, 1916, the traffic manager of the Jobbers' and Manufacturers' Bureau of Huntington applied to the traffic officials of the carriers for the establishment of a rate of \$2.20 to Huntington, which, as stated above, was the rate which we had prescribed to Zanesville, pointing out that the rate of \$2.82 to Huntington was in excess of the combination on Cincinnati. A little later complainant also began negotiations with defendants for a reduction in the Huntington rate. After considerable delay the general freight agent of the Chesapeake & Ohio, in December, 1916, advised that he was suggesting to western connections the adoption of a rate of \$2.45 per net ton. This rate, however, was not published, and the rate of \$2.82 remained in effect until increased to \$3.20 May 22, 1918, following *The Fifteen Per Cent Case*, 45 I. C. C., 303. On June 25, 1918, it was further increased to \$3.40 under General Order No. 28 of the Director General of Railroads.

During this time complainant continued its efforts to secure a lower rate to Huntington and finally, on July 31, 1918, a freight-rate authority was issued to publish a rate of \$3, which was and is satisfactory to complainant. Because of delay in publication this rate did not become effective until October 18, 1918. It was arrived at by taking the amount received by the initial lines to Chicago junctions as their division of the rate of \$2.20 in effect prior to May 22, 1918, to Zanesville, and applying to the short-line distance from Kanka-

kee, Ill., to Huntington the same earnings per ton-mile as accrued to the eastern carriers for the haul from Chicago to Zanesville. This resulted in a base rate of \$2.45 per ton. The increases authorized in *The Fifteenth Per Cent Case* and General Order No. 28 produced the \$3 rate now in effect. According to defendants this rate was established to enable the shippers to compete with other glass-producing points and in response to their repeated requests.

The rates on glass sand from Ottawa to a number of points at which glass is manufactured, with distances and ton-mile revenue, are stated in the following table:

From Ottawa to—	Miles.	Apr. 1, 1915, to May 21, 1918.		May 22 to June 24, 1918.		June 25 to Oct. 17, 1918.	
		Rates.	Ton-mile revenue.	Rates.	Ton-mile revenue.	Rates.	Ton-mile revenue.
			<i>Mills.</i>		<i>Mills.</i>		<i>Mills.</i>
Lancaster, Ohio.....	397	¹ \$2.20	5.54	\$2.50	6.30	\$2.70	6.81
Zanesville, Ohio.....	434	¹ 2.20	5.07	2.50	5.77	2.70	6.22
Cambridge, Ohio.....	461	2.40	5.21	2.80	6.07	3.00	6.51
Huntington, W. Va.....	464	2.82	6.07	3.20	6.89	3.40	7.32
Do.....		¹ 2.40	5.17	² 2.80	6.03	³ 3.00	6.46
Youngstown, Ohio.....	477	2.40	5.03	2.80	6.88	3.00	6.28
Barnesville, Ohio.....	494	¹ 2.40	4.86	2.80	5.67	3.00	6.08
Staubenville, Ohio.....	512	2.50	4.88	2.90	5.66	3.10	6.06
Pittsburgh, Pa.....	542	2.60	4.79	3.00	5.54	3.20	5.90

¹ Rates prescribed in *Boldt Co. v. C., E. I. & P. Ry. Co., supra.*

² Rates sought.

It will be observed that the rates assailed exceeded those charged to other points of equal or greater distance from Ottawa. Sand, including glass sand, is rated sixth class in the governing official classification. The sixth-class rate to Huntington is the same as, or lower than, the corresponding rates to any of the points named above. Defendants point out that in the transportation of sand to Huntington the Ohio River must be crossed, but this is true also of traffic to Pittsburgh. The distance to Pittsburgh is 78 miles farther, but the rates prior to October 18, 1918, were lower than to Huntington.

Between November 21, 1917, and October 17, 1918, complainant shipped 281 carloads of sand from Ottawa of which 164 were in box cars and 117 in gondolas. The average loading of the box cars was 40.17 tons and of the gondolas, 54.37 tons. The average car-mile earnings under the rate of \$2.82, in effect prior to May 22, 1918, were 24.4 cents for shipments in box cars and 33 cents for those in gondolas. The earnings under a rate of \$2.40 would have been 20.7 and 28.1 cents, respectively. The average revenue per loaded car-mile of all freight on the Chesapeake & Ohio during the year ended December 31, 1917, was shown by complainant to have been 14.93 cents; on the Baltimore & Ohio, 17.6 cents; and on the Chicago,

Rock Island & Pacific, 15.92 cents. Glass sand is a low-grade, heavy loading commodity, and is subject to little or no loss or damage in transit.

EASTMAN, *Commissioner*:

The foregoing is in substance the statement of facts contained in the examiner's proposed report which was served upon the parties. In that report it was recommended that we find that the rates charged from November 1, 1917, to May 21, 1918, from May 22 to June 24, 1918, and from June 25 to October 17, 1918, were unreasonable to the extent that they exceeded for the respective periods rates of \$2.40, \$2.80, and \$3 per net ton. The intervenor excepts to the limitation of the finding to November 1, 1917, on the ground that the rates were unreasonable for two years prior to the filing of the complaint and that it is therefore entitled to reparation on shipments made during that period. It suffices to say that the complaint attacked only the rates in effect between November 1, 1917, and October 18, 1918, and the intervenor merely asked and was granted permission to be treated as a party thereto.

In their exceptions defendants renew arguments advanced on brief in opposition to a finding of unreasonableness, stressing the fact that the shipments moved during a period of greatly increased transportation costs and diminished carrier net income as compared with the period covered by our report in *Federal Glass Co. v. C., R. I. & P. Ry. Co.*, *supra*; that glass sand is much more valuable than common or molding sand; that via the shortest workable route from Ottawa to Huntington under the Disque scale, so called, the sixth-class rate, applicable on sand under the governing official classification, would have been \$3; subsequent to *The Fifteen Per Cent Case*, *supra*, \$3.50; and under General Order No. 28, \$4.40; that the transportation conditions surrounding the movement from and to these points are less favorable than those from Ottawa to such points as Zanesville, mainly because of the bridge crossing over the Ohio River; that the rates assailed were subsequently reduced to \$3 to enable Huntington glass manufacturers to meet competition at other producing points north of the Ohio; and that the rates to such points afford no measure of the reasonableness of the rates to Huntington, because they were too low and were so recognized by the subsequent increases under *The Fifteen Per Cent Case* and General Order No. 28. But neither these contentions nor any facts of record warranted the maintenance during the period in question of rates in excess of those suggested as reasonable by the examiner.

Upon consideration of the entire record we adopt the foregoing statement of facts as our own and find, as recommended by the

examiner, that the rates charged from November 1, 1917, to May 21, 1918, from May 22 to June 24, 1918, and from June 25 to October 17, 1918, were unreasonable to the extent that they exceeded for the respective periods rates of \$2.40, \$2.80, and \$3 per net ton. We further find that during the period from November 1, 1917, to October 17, 1918, complainant and intervener made shipments as described and paid and bore the charges thereon; that they have been damaged and are entitled to reparation, with interest, in an amount equal to the difference between the charges paid and those that would have accrued at the rates herein found reasonable. We are without power to award reparation for excess war taxes paid. The exact amount of reparation due under our findings herein can not be determined from the record, and complainant and intervener should comply with rule V of the Rules of Practice.

57 I. C. C.

No. 10614.

GRAND RAPIDS PLASTER COMPANY

v.

DIRECTOR GENERAL, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted March 2, 1920. Decided March 20, 1920.

Carload rates and minima on plaster and other gypsum products from Grand Rapids, Mich., to destinations in Wisconsin north of an east-and-west line drawn from Sheboygan to Prairie du Chien, in the upper peninsula of Michigan, and in the extreme eastern part of Minnesota found unduly prejudicial to Grand Rapids as compared with carload rates and minima contemporaneously maintained on the same commodities to the same destinations from Fort Dodge, Iowa, and points grouped therewith. Undue prejudice required to be removed. Reparation denied.

Ernest L. Ewing, W. W. Collin, jr., and Borders, Walter & Burchmore for complainant.

E. M. Davis, J. N. Davis, G. R. MacLean, and B. F. Moffatt for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, *Commissioner*:

Save for slight modifications, the examiner's proposed report, which was served upon the parties and to which no exceptions were taken, forms the basis of this report.

In *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.*, 34 I. C. C., 202, hereinafter called No. 5626, the present complainant, a corporation engaged in mining and quarrying gypsum rock and manufacturing the products thereof at Grand Rapids, Mich., attacked the rates on plaster and other gypsum products, in carloads, from Grand Rapids to points in northern Illinois and southern Wisconsin as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce. The gist of the complaint was that competitors at Fort Dodge, Gypsum, and Mineral City, Iowa, were accorded lower rates, distance considered. We held that—

The circumstances and conditions governing transportation from both points [Grand Rapids and Fort Dodge] do not warrant rates on plaster and other gypsum products from Grand Rapids that are relatively higher than those

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contemporaneously maintained on the same articles from Fort Dodge to destinations in northern Illinois and southern Wisconsin. * * * The maintenance of higher minimum weights for carloads from Grand Rapids than from Fort Dodge is an unjust discrimination against Grand Rapids. * * *

The present adjustment of rates as between Grand Rapids and Fort Dodge to northern Illinois and southern Wisconsin bristles with inequalities. Some of these have been pointed out above. A thorough check of the rates on plaster and other gypsum products from Grand Rapids and Fort Dodge to points in this consuming territory should be made with a view to eliminating the discrimination.

Pursuant to those findings, the defendants filed a petition for approval of certain proposed rates, including those specified in Fourth Section Application No. 10596, which purported to be in compliance with the report. In our report on supplemental hearing, 41 I. C. C., 1, we granted the fourth section relief sought; approved, with certain modifications, the suggested readjustment; and entered an order requiring the removal of the undue and unreasonable prejudice found to exist against Grand Rapids.

In the present case complainant alleges that the rates charged by the defendants on the same traffic from Grand Rapids to destinations in Wisconsin north of a line drawn through Sheboygan and Prairie du Chien, in eastern Minnesota, and in the upper peninsula of Michigan are unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. As in No. 5626, the competitors alleged to be favored are located at Fort Dodge, Mineral City, and Gypsum, which are within a few miles of each other and take the same rates. Rates from Grand Rapids to the consuming territory affected are subject to a carload minimum weight of 40,000 pounds, while from the Fort Dodge group to a number of important points there are, in addition to the rates based on the carload minimum of 40,000 pounds, rates from 2 cents to 4.5 cents per 100 pounds lower based on a 60,000-pound minimum. A more liberal carload mixture, later discussed, is said to be permitted on shipments from Fort Dodge. Complainant seeks relief for the future and asks for reparation on all shipments moving since May 1, 1917. Rates are stated in cents per 100 pounds.

Complainant does not regard the rates assailed as unreasonable *per se*, but only as compared with the rates from Fort Dodge to the same destinations, and an increase in the rates from Fort Dodge to the same relative level as now applies from Grand Rapids would satisfy the complaint. Other gypsum-producing plants are located at Alabaster, Mich., Port Clinton, Ohio, Oakfield, N. Y., and Plasterco and Saltville, Va., but the destinations in question appear to be supplied almost wholly by Fort Dodge and Grand Rapids. There are several gypsum plants in the vicinity of Grand Rapids, but all

except complainant and one other also own plants at Fort Dodge. The volume of plaster tonnage moving into this region is not stated of record, nor is it shown how the present tonnage is divided as between Grand Rapids and Fort Dodge. About one-tenth of the annual output of complainant's plant is shipped to Wisconsin destinations, including Milwaukee. The plaster and plaster products from both fields are of about the same quality, the keeping qualities are similar, and while a dealer may prefer a particular brand, he will not pay as much as 20 cents a ton more therefor than for another. The goods are sold f. o. b. destination, the complainant quoting a delivered price; to the factory price at Grand Rapids is added the lowest freight rate from a competing producing point, so that where the rate to a particular destination is higher from Grand Rapids than from Fort Dodge complainant shrinks its profits to the extent of the difference in the freight rate. The factory price of wall plaster is about \$10 a ton, and while the complainant has frequently absorbed as much of the freight rate to this territory as 50 cents a ton, when the absorption exceeds that amount the business is not regarded as "attractive."

Several exhibits filed by the complainant set forth the rate situation in detail. They show all points in the state of Wisconsin having a population of more than 1,000—about 150 in number—together with the rates, distances, and ton-mile earnings from both Fort Dodge and Grand Rapids. The following is illustrative:

To—	From Grand Rapids.			From Fort Dodge.		
	Miles.	Rate.	Ton-mile earnings.	Miles.	Rate.	Ton-mile earnings.
		<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>
Appleton.....	207	13.5	13	410	16	7.8
Arcadia.....	373	19.5	10.5	238	17	14.3
Black River Falls.....	296	19.5	13.2	290	17.5	12.1
Crandon.....	336	20.5	12.2	435	20	9.2
De Pere.....	207	12	11.6	434	17	7.8
Eau Claire.....	354	18.5	10.5	282	16	11.3
Florence.....	326	20.5	12.6	529	22	8.3
Hudson.....	418	20.5	9.8	230	¹ 12	10.4
Kewaunee.....	203	11.5	11.3	442	¹ 14.5	12.6
Little Chute.....	205	14	13.7	416	17	7.7
Menominee.....	379	20.5	10.8	276	16	8.2
New Richmond.....	435	20.5	9.4	246	16	11.6
Oconto.....	230	11.5	10	443	¹ 12	9.8
Odanah.....	442	20.5	9.3	403	¹ 16	13
Phillips.....	380	20.5	10.8	392	19.5	8.8
Rice Lake.....	410	20.5	10	312	22	10.9
Rib Lake.....	355			382	20	10.2
Shawano.....	239	20	16.7	402	17	10.9
Spooner.....	436	20.5	9.4	320	20	10.5
Washburn.....	414	20.5	9.9	398	19.5	9.7
					¹ 12	7.5
					¹ 16.5	10.3
					¹ 15	7.5
					¹ 16.5	8.3

¹ Minimum weight, 60,000 pounds.

² Minimum weight, 40,000 pounds.

The nearest destination point in Wisconsin set forth in the exhibits is 117 miles from Grand Rapids, the most distant 483 miles. The lowest rate from Grand Rapids is 10.5 cents and the highest 20.5 cents, while the ton-mile earnings range from 19.4 to 8.5 mills. The distances from Fort Dodge range from 191 to 529 miles, the rates from 10 to 22 cents, and the ton-mile earnings from 14.2 to 7.2 mills. To 38 destinations distant from 291 to 483 miles, Grand Rapids pays 20.5 cents, while for comparable distances from Fort Dodge rates lower than 20.5 cents are applicable to 105 points. Out of the 150 points listed, 103 have a less mileage from Grand Rapids than from Fort Dodge, but to 68 of these points the rates from Grand Rapids are higher than from Fort Dodge; and 14 points, although less distant from Grand Rapids, take the same rate as from Fort Dodge. On the other hand, out of 47 points nearer Fort Dodge, only 4 have a lower rate from Grand Rapids than from Fort Dodge. To the northern peninsula of Michigan, which is nearer to Grand Rapids than to Fort Dodge, rates from the latter are somewhat higher than from Grand Rapids, the difference varying considerably at the respective destinations. These exhibits show that, generally speaking, on an equal rate Fort Dodge can ship to more distant Wisconsin points than can Grand Rapids, and that the rates from Fort Dodge, distance considered, are generally on a lower level to this territory than those from Grand Rapids. To Minneapolis and St. Paul, Minn., hereinafter called the twin cities, which aside from Chicago and Milwaukee are the points of heaviest consumption, the freight differential against Grand Rapids is \$1.70 a ton, completely barring it from that market.

On behalf of the defendants it was shown that on business moving through Milwaukee the basis for commodity rates from Grand Rapids to the territory in question is usually the full combination of local rates; that the joint rates on plaster are considerably lower than the combination basis; that on traffic from Fort Dodge the interchange is made on or west of the Mississippi River at "prairie town junctions" on interchange tracks, while Grand Rapids traffic, the bulk of which moves over rail-lake-and-rail routes, involves a transfer from rail to car ferry and back to rail; that the operating costs of the Milwaukee terminal are very high; that the Pere Marquette, which operates the car ferry, has no direct interchange at that point with the Soo line or Chicago & North Western and must use as a switching carrier the Chicago, Milwaukee & St. Paul; that there is involved a greater switching service at Milwaukee on this through traffic than on traffic for local delivery; and that the rates from Grand Rapids are not at present as high as the carriers are warranted in charging under our decisions, since they were not re-

vised under the *C. F. A. Class Scale Case*, 45 I. C. C., 254, or following *The Fifteen Per Cent Case*, 45 I. C. C., 303. Under the latter decision no increase was permitted in the rates from Fort Dodge, and since our order, not yet expired, in *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.*, *supra*, established a relationship as between Fort Dodge and Grand Rapids, the carriers did not disturb that relationship and therefore did not take advantage of the increase permitted in the rates from Grand Rapids. Under General Order No. 28 of the Director General of Railroads an increase of 2 cents per 100 pounds was made in the plaster rates. Defendants also urge that no showing has been made of the volume of tonnage into this territory, and that complainant can and does absorb at other points a greater amount than on shipments to the territory in question. Complainant concedes that this may have been done on a few carloads.

To certain large consuming centers, such as the twin cities, Winona, La Crosse, Duluth, and Ashland, Fort Dodge has lower rates based on a carload minimum weight of 60,000 pounds than on a minimum of 40,000 pounds, whereas Grand Rapids has no alternative rates. The consumption of plaster is approximately 30 tons annually per 1,000 population, so that while a low minimum weight to the less populous districts is desirable, the higher minimum may easily be availed of to the larger cities. Plaster deteriorates with age, and frequently becomes worthless within six months. For this reason, and because of lack of ample warehouse facilities, the average dealer orders as little plaster as will meet his estimated requirements, purchasing a mixed carload of plaster and other gypsum products. Plaster producers also ship commodities other than those they manufacture, one being hydrate of lime. The tariffs of the carriers serving Fort Dodge provide that hydrate of lime aggregating 25 per cent of the total weight of the shipment may be included at the plaster rate, as well as nails with plaster board, to the extent of 1 per cent of the total weight, whereas from Grand Rapids the complainant may include hydrate of lime weighing not to exceed 25 per cent of the minimum carload weight. There is no lime produced at Fort Dodge, and the record indicates that there is little if any use made of the more advantageous mixture permitted. In view of this, it will not be further considered.

The rate situation in the territory here considered does not differ materially from that presented in No. 5626. The contention is, in substance, that the rates from Grand Rapids are improperly related to those from Fort Dodge. The record supports that contention. Whether the volume of traffic is large or small the complainant should, under conditions that are substantially similar, have an opportunity to compete in this northern territory, as in the region to the

south, on a rate basis fairly comparable with that afforded the shippers at Fort Dodge. We therefore find that the present adjustment of rates on plaster and gypsum products, in carloads, from Grand Rapids and Fort Dodge and points grouped therewith to that portion of Wisconsin north of an east-and-west line drawn from Sheboygan to Prairie du Chien and to points in the upper peninsula of Michigan and the extreme eastern part of Minnesota is unduly preferential of Fort Dodge and points grouped therewith, and unduly prejudicial to Grand Rapids. Defendants should make a thorough check of their tariffs with a view to the publication of rates which shall not be relatively higher, distance considered, from Grand Rapids than from Fort Dodge. In making the readjustment, Grand Rapids should be accorded the same treatment with respect to minimum carload weights as Fort Dodge. Publication of rates from Grand Rapids subject to a carload minimum of 60,000 pounds should be made under rule 77 of Tariff Circular 18-A. Defendants will be expected to submit to us for approval, and to complainant, within 60 days from the service of this report, a statement outlining the adjustment of rates to representative points which they propose to establish in conformity with these conclusions. No order will be entered pending such adjustment. The record affords no basis for an award of reparation and the claim therefor is accordingly denied.

No. 10773.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, WEST JERSEY & SEASHORE
RAILROAD COMPANY, ET AL.

Submitted December 26, 1919. Decided March 20, 1920.

Rates on sulphuric acid, in tank-car loads, from Carney's Point, N. J., to Hopewell, Va., found to have been and to be unreasonable to the extent that they exceeded and exceed the rates contemporaneously applicable on nitrating acid, in tank-car loads, from and to the same points. Reparation awarded.

Harvey S. Farrow for complainant.*Henry Wolf Bikelé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

In this proceeding a proposed report was served upon the parties. No exceptions were filed.

Complainant is a corporation engaged in the manufacture of explosives and chemicals, with plants at Carney's Point, N. J., and Hopewell, Va. By complaint filed July 19, 1919, it alleges that the rates charged by defendants on certain shipments of sulphuric acid, in tank-car loads, from Carney's Point to Hopewell, during the period from June 15, 1918, to November 16, 1918, were, and that the present rates are, unjust and unreasonable to the extent that they respectively exceeded and exceed the rates contemporaneously applicable on nitrating acid, in tank-car loads, from and to the same points. An award of reparation and the establishment of a reasonable rate for the future are asked. Rates will be stated in cents per 100 pounds.

The shipments moved during the period stated over the lines of the West Jersey & Seashore Railroad to Camden, N. J.; Pennsylvania Railroad to Delmar, Del.; New York, Philadelphia & Norfolk Railroad to Norfolk, Va.; and Norfolk & Western Railway beyond, a distance of 404 miles. No joint rates were or are in effect on sulphuric acid via the route of movement. The rates legally applicable

57 I. C. C.

were and are the sums of the intermediate rates, which were 28 cents prior to June 25, 1918, made up of 11 cents to Philadelphia, Pa., and 17 cents beyond, and 35.5 cents on and after that date under General Order No. 28—i. e., 14 cents to Philadelphia and 21.5 cents beyond. The two factors last named are still in effect. A statement of charges filed with the complaint indicates that there are outstanding overcharges. Effective March 23, 1915, a rate of 15.2 cents was published on nitrating acid in tank-car loads, from Carney's Point to Hopewell. Following our decision in the *Fifteen Per Cent Case*, 45 I. C. C., 303, this rate was increased to 17.5 cents, and on June 25, 1918, pursuant to General Order No. 28, it was further increased to 22 cents, still in effect.

The defendants offered no evidence in justification of the rates assailed.

Both sulphuric acid and nitrating acid are rated fifth class, the same as in the official classification. In the southern classification a higher rating is provided for nitrating acid than for sulphuric acid. Complainant cites *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.*, 51 I. C. C., 477, in which we found the rate on sulphuric acid from Marcus Hook, Pa., to Hopewell, a distance of 328 miles, unreasonable to the extent that it exceeded 14.6 cents, the rate contemporaneously applicable on nitrating acid from and to the same points.

In *Du Pont de Nemours Powder Co. v. D. & R. G. R. R. Co.*, 52 I. C. C., 427, we found that "nitrating acid contains approximately 80 per cent of sulphuric acid and 20 per cent of nitric acid and is used in the manufacture of explosives," and said:

Both nitrating and sulphuric acids are corrosive liquids, but are not classed as explosives. They move in bulk in tank cars, and one involves no greater transportation risk than the other. While the 20 per cent nitric acid content makes nitrating acid of somewhat greater value than sulphuric acid, carriers throughout the territory in question have generally recognized the two acids as comparable commodities by according them the same classification rating, and the same commodity rates when published.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or exceed the rates contemporaneously applicable on nitrating acid, in tank-car loads, over the route of movement from Carney's Point to Hopewell; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record and the complainant should therefore prepare

a statement, including therein all overcharges, showing the details of the shipments in accordance with rule V of the Rules of Practice, and submit it to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 10732.

EASTERN LUMBER COMPANY

v.

DIRECTOR GENERAL AND NEW YORK CENTRAL
RAILROAD COMPANY.

Submitted January 9, 1920. Decided March 20, 1920.

Defendants mailed notice of arrival of a carload of lumber at New York, N. Y., which was never received by the consignee. *Held*, That the carrier's duty was performed when it placed notice in the mail and that demurrage charges were properly assessed. Complaint dismissed.

Henry Adéma for complainant.

Parker McCollester for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

This case was the subject of a report proposed by the examiner, to which no exceptions were filed.

Complainant is a corporation engaged in the wholesale lumber business at Tonawanda, N. Y. By complaint filed May 17, 1919, it alleges that \$70 demurrage charges were unlawfully collected on a carload of lumber shipped from Elk River, Idaho, November 14, 1917, consigned to complainant at New York, N. Y. Reparation is asked.

The car arrived at Sixtieth street, New York Central station, New York, February 26, 1918, and was placed for delivery at 9 a. m. of the same day. It was ordered released at 7 a. m., March 14, 1918. Demurrage charges in the sum of \$70 were collected.

These charges are attacked solely on the ground that complainant did not receive notice of the arrival of the car until the carrier's agent at Tonawanda asked by telephone, March 13, 1918, for disposition, which was immediately given.

The arrival-notice clerk of the New York Central at the Sixtieth street station testified that the notice of arrival was made out by the billing clerk from the revenue billing, with four carbon copies, which were handed to the witness, who separated them and, under date of February 26, 1918, entered notice in the mailing book under the heading "Notices of Arrival Mailed"; that a copy of the notice was addressed to "Eastern Lumber Company, Tonawanda, N. Y.," in accordance with the billing; and that the notice was thereupon placed in a stamped envelope and deposited in a United States mail box on the same day.

The carrier's demurrage tariff then in effect provided:

Notice shall be sent or given consignee by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents * * * In case car is not placed on public-delivery track within twenty-four hours after notice of arrival has been sent or given, a notice of placement shall be sent or given to consignee.

And:

On cars held for unloading, time will be computed from the first 7:00 a. m. after placement on public-delivery tracks, and after the day on which notice of arrival is sent or given to consignee.

On a similar state of facts we held, in *Ohio Iron & Metal Co. v. E., J. & E. Ry. Co.*, 34 I. C. C., 75, that the carrier had fully discharged its duty under its tariff, and that demurrage charges were properly assessed.

Following that case and upon this record we find that the demurrage charges lawfully accrued.

An order dismissing the complaint will be entered.

No. 10461.¹

PEERLESS COAL COMPANY OF ILLINOIS

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted June 20, 1919. Decided March 27, 1920.

1. Springfield Terminal Railway Company found to be a common carrier of property subject to the interstate commerce act which may lawfully receive from its trunk line connections divisions of joint rates, or absorptions of switching charges under appropriate tariffs, such divisions or absorptions to be reasonable.
2. Rates on coal, in carloads, from points on the Springfield Terminal Railway to interstate destinations found to have been and to be unduly prejudicial. Also found that they were unduly prejudicial from and after June 25, 1918, to points in Illinois. Undue prejudice ordered removed.
3. Reasonableness of rates and question of damage reserved for further hearing.

W. M. Hopkins for complainants.*Frank H. Towner, Kenneth F. Burgess, and Silas H. Strawn* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

In 1904 or 1905 the Springfield Colliery Company, which then owned and operated a coal mine at Colliery, Ill., on the outskirts of Springfield, Ill., constructed a track less than a half mile in length from its mine to a connection with the Chicago & Alton Railroad. Subsequently another track was built three-fourths of a mile in the opposite direction to the Wabash Railway's Riverton, Ill., yard, and a connection was also effected at that point with the Illinois Traction System, an electric line. Sidings, aggregating some 3 miles, were constructed in the vicinity of the Colliery mine. Sometime in 1908 the Springfield Colliery Company was absorbed by the Jones & Adams Coal Company, a corporation. On April 22, 1908, the Springfield Terminal Railway Company, hereinafter termed "the

¹ This report also embraces No. 10461 (Sub-No. 1) Jones & Adams Coal Company v. Same.

Terminal," was incorporated under the laws of the state of Illinois, with an authorized capital stock of the par value of \$50,000, all shares of which were held by the Jones & Adams company. The latter transferred to the Terminal everything comprised in the railway theretofore operated as an adjunct to the Colliery mine, except the land over which it operated, and this was transferred to the Terminal in 1916 for \$15,000, for which amount the Terminal gave its note. On February 1, 1919, the Peerless Coal Company of Illinois, a corporation, succeeded to the Jones & Adams company's interest in the Colliery mine as well as in the Terminal. On June 18, 1918, a certificate of convenience and necessity was issued by the Public Utilities Commission of Illinois authorizing an extension of the Terminal's line to the mine of the Bissell Coal Company, about 5 miles northeast of Springfield on the Illinois Central Railroad, and this extension, which was begun in 1918, although not completed at the time of the hearing, was completed in the early part of 1919. In July, 1917, the Terminal also acquired trackage rights over 2.8 miles of Chicago & Alton main track, over which it operates to and from connections with the Illinois Central, the Chicago, Peoria & St. Louis, the Baltimore & Ohio, and the Cincinnati, Indianapolis & Western railroads.

From points on the lines of these carriers and on the lines of their connections within the*so-called Springfield district, which includes the territory served by the Terminal, the same rates on coal, in carloads, hereinafter referred to as the Springfield group rates, applied and apply uniformly to interstate destinations and generally to intrastate points in Illinois, while from points on the Terminal combination rates apply, made up of the Terminal's switching charge of 10 cents per ton, minimum \$2 per car, maximum \$4 per car, to junctions with the trunk lines, and the Springfield group rates beyond, less certain absorptions hereinafter mentioned. In their complaints, filed February 17 and 21, 1919, respectively, the Peerless Coal Company and the Jones & Adams Coal Company attack these charges as unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation to complainants on shipments moving within the statutory period, and to prescribe just and reasonable through rates. At the hearing, the Bissell Coal Company, a corporation, intervened in support of the prayer for reasonable through rates. Our jurisdiction to award reparation on the intrastate shipments within Illinois is confined to the period of federal control.

The defendant trunk lines, hereinafter called defendants, question the Terminal's status, contending that it is not a common carrier. As heretofore shown, it operates over a little more than 7 miles of

track, of which it owns 4.2 miles and has trackage rights over 2.8 miles. It owns one locomotive and one flat car; maintains a public team track at Riverton; and files tariffs with us and with the Public Utilities Commission of Illinois, in which it publishes rates for the transportation of all traffic between points on its line and its trunk line connections, also between such connections, and in which it solicits industrial location on its rails, emphasizing the advantages of such location. It also files annual reports with us, and keeps its accounts under our requirements. It does not transport passengers, pay per diem, or issue bills of lading or waybills. It has no station buildings for receiving freight, and its only facilities in addition to the public team track at Riverton are those maintained for the interchange of cars between connections and for the receipt and delivery of cars from and to industries which it serves. Cars to and from the trunk line junctions are handled by the Terminal in accordance with the proprietary coal company's "card" instructions, the waybilling of outbound shipments being performed by the defendants' agents. During the fiscal year ended June 30, 1918, it switched from the Colliery mine 11,489 cars, of which 7,538 were destined to intrastate points in Illinois and 3,951 to interstate points; it switched inbound 193 cars, and interchanged 188. Over 90 per cent of the traffic outbound was coal from the Colliery mine. The inbound traffic consisted of supplies for this mine, such as mine props, hay, and powder. It appears that during certain months in previous years the Terminal's locomotive was undergoing repairs when the proprietary mine was closed down. During such periods, however, a locomotive was rented, at an average cost of \$15 per day, from one of the Terminal's trunk line connections, which enabled it to handle all the business offered. Since about June, 1916, the accounts of the Terminal and the proprietary coal companies have been kept separately, but prior thereto no separation was made. The officers of the Terminal since its incorporation have been and now are officers of the proprietary coal companies. Prior to 1916 their salaries were paid entirely by the proprietary coal companies; since then a portion has been allocated to and paid by the Terminal. The offices of the coal company in Chicago were and are the offices of the Terminal. No part of the expense thereof was borne by the Terminal prior to 1916; but since then it has paid \$300 per annum. It never paid any rental for the use of its right of way, except \$700 paid in 1916, at or about the time of the purchase thereof. It appears that prior to February, 1917, the Terminal's only source of revenue was moneys collected from the connecting lines, but since that date there has been credited to its account by the proprietary coal companies the difference between its switching charges and the

amounts absorbed by its trunk line connections. From its incorporation to date the Terminal has been operated at a loss, the moneys to cover the deficit having been advanced by the proprietary coal companies on notes therefor given by the Terminal. The Terminal performed and performs no intraplant switching for the proprietary coal companies. Cars are moved between the mine and the Terminal's yard, some 1,500 or 1,600 feet distant, by gravity, and the men engaged in the movement from and to the Terminal's yard are employees of the mine. The service performed by the Terminal for the proprietary coal companies does not differ from that customarily and ordinarily rendered by road-haul engines in serving mines.

Neither of the complainants has any interest in the Bissell mine, which is the only industry other than the proprietary coal mine served by the Terminal. Since the completion of the extension to the Bissell mine the Terminal has switched some cars of coal from that mine to the Wabash, but the number is not of record. This movement is subject to the same charges as apply from the Colliery mine.

The status of the Terminal was attacked by the defendants in a proceeding before the Public Utilities Commission of Illinois, the contention there being that the Terminal's business was largely furnished by its proprietary interests and that it was a plant facility. That commission held, on June 4, 1918, that the Terminal was a common carrier within the meaning of the Illinois statutes and the test laid down by the Supreme Court in the *Tap Line Cases*, 234 U. S., 1, and other adjudicated cases, saying:

The fact that a large share of the business of the respondent (Terminal) is furnished by the Jones and Adams Coal Company, its proprietary interest, and that the officers or employees of the proprietary interest and respondent are the same does not bring respondent within the class of plant facilities, as it does not appear that it performs more or different service for the coal company owning it than is ordinarily performed by carriers serving coal mines. Nor is it divested of its status as a common carrier by reason of its proprietary interest.

An appeal from this decision is now pending in the circuit court of Sangamon county, Ill.

As hereinbefore stated, the Springfield group rates apply from mines in the vicinity of Springfield on the lines of defendants or their connections within the Springfield district, while from points on the Terminal, within the confines of the same district, there is added to the Springfield group rates the Terminal's switching charge less certain absorptions. Prior to March 26, 1910, and subsequent to June 1, 1909, the Terminal's published switching charges were \$1 per car between Colliery and the Chicago & Alton, Illinois Central, Illinois Traction System, and Wabash, and \$1.50 per car be-

tween Colliery and the Baltimore & Ohio Southwestern, Chicago, Peoria & St. Louis, and Cincinnati, Hamilton & Dayton. On March 26, 1910, the charges between Colliery and the Chicago & Alton, Baltimore & Ohio Southwestern, Chicago, Peoria & St. Louis, and Cincinnati, Hamilton & Dayton were increased to \$2, and the same increase was made between Colliery and the Illinois Central effective April 8, 1910. Effective April 29, 1916, a rate of 10 cents per ton, minimum \$2 per car, maximum \$4 per car, was established on interstate traffic to and from all the above-mentioned connections, and the same charges were established for interchange switching performed by the Terminal for its trunk line connections. These had theretofore been \$2 per car. The same charges were also proposed for intrastate traffic, but were disapproved by the Public Utilities Commission of Illinois and were not allowed to become effective until June 15, 1918, when they were found justified by that commission. Prior to the increases effected April 29, 1916, all of the Terminal's switching charge was absorbed by some of the carriers on all traffic and by others on competitive traffic, or to certain points only. Since that date some of the carriers which had theretofore absorbed all the charges, the Illinois Central and Chicago & Alton, for example, now absorb something less than the total switching charge, so that via such lines the through rates have been increased by the difference between these absorptions and the Terminal's switching charges. In addition to these increases, the Springfield group rates have been increased. Thus, the rate on coal to Chicago, Ill., has been increased from 82 cents per ton, the rate in effect in February, 1917, to \$1.32, the present rate.

Complainants' position is that the through rates in question were and are unlawful to the extent that they exceeded and exceed the Springfield group rates. Defendants' principal witness admitted that if the Terminal is a common carrier "it should be accorded the same treatment as any other road similarly situated."

It appears that the Springfield group rates apply from mines on the Cincinnati, Indianapolis & Western and the Chicago & Illinois Midland railways, the latter a short line in the vicinity of Springfield, and from the Chicago-Springfield and the Springfield Cooperative mines, in the Springfield district, on the Chicago & Alton. From mines on other lines in Illinois these defendants apply rates no higher than those applicable from the groups in which the mines are located. The defendants' position is that the Colliery mine is treated the same as any other mine similarly located, in that the absorption provisions applicable to complainants' traffic apply uniformly to all mines in the Springfield district; that the Springfield group rates apply from mines within the group to Chicago, for example, if the

mines are located on lines reaching that point, and that the group rate would apply from complainants' mine if it were so located; that the Illinois Central's absorption of switching charges is limited to \$2.50 per car because the Springfield group rates were and are relatively low and the cost of handling this traffic has increased; and that complainants' mine is in the same position as the Tuxhorn mine located at Keys, Ill., about 5 miles east of Springfield, on the Cincinnati, Indianapolis & Western, the Illinois Central absorbing but \$2.50 of the originating line's switching charges, which are the same as the Terminal's. It appears, however, that joint rates are maintained from this mine very generally to destination points, including Chicago, on the Springfield group basis. While it is true that the defendants' absorption tariffs provide for general application through the Springfield district, it also appears that joint rates on the Springfield group basis apply generally through this territory, with the result that complainant, to which that basis is not extended, has to pay something more than its competitors for a like service. In an order issued June 4, 1918, the Public Utilities Commission of Illinois prescribed through rates on this traffic from complainants' mine to intrastate Illinois destinations no higher than those contemporaneously maintained by the defendants herein and others from points on their lines within the Springfield group. Speaking of the general practice with reference to the blanketing of coal rates in Illinois that commission said:

A group coal rate adjustment exists throughout the State, and the same rate generally applies from all mines within the various groups to all points of destination without the groups. Rates vary as to the points within the group according to distance and commercial conditions. The mine of complainant is located in the so-called Springfield group, which is most extensive of the Illinois groups. The general practice is that either joint rates or arrangements are made between the Illinois carriers so that the group rate applies alike from mines in the group to the same destination. Where a mine is located on one line and the coal is shipped to a destination upon the line of another carrier, it is the usual custom of the road haul carrier to assume the switching charge of the originating line.

These through rates have never been established, an appeal having been taken to the circuit court of Sangamon county, Ill.

Competition in the sale of coal is keen and complainants have secured and can secure no more for their coal than their competitors in the Springfield district. Defendants point out that subsequent to August 21, 1917, complainants had no difficulty in selling coal for the maximum price fixed by the United States Fuel Administration. It was testified, however, that while the coal was quoted f. o. b. complainants' mine, charges in addition to the Springfield group rates were borne by complainants. They made no effort to have these

charges carried forward and paid by the consignees for the reason, as explained by their witnesses, that the coal was sold in competition with mines which enjoyed the Springfield group rate and that, therefore, the transportation charges over and above that rate were borne by the complainants out of their profits and represent the damage suffered by them as a result of the alleged unreasonable and discriminatory charges paid on the shipments in issue.

We are of opinion and find that the Springfield Terminal Railway Company was during the period covered by these complaints and is a common carrier of property subject to the interstate commerce act, and may lawfully receive from its trunk line connections divisions of joint rates, or absorptions of switching charges under appropriate tariffs, such divisions or absorptions to be reasonable. Its compensation, whether in the form of divisions of the through rates or of switching absorptions, must not be more than is reasonable, and a specific and complete statement of any basis agreed upon must be filed with us immediately upon its adoption.

We further find that during the period covered by these complaints, the rates on coal, in carloads, from Colliery, Ill., to points in other states were, are, and for the future will be, unduly prejudicial to the extent that they exceeded or may exceed the rates contemporaneously maintained on like traffic from mines located on the tracks of the defendants within the Springfield group to the same points of destination; and that from and after June 25, 1918, the rates on this traffic from the same point to destinations within the state of Illinois were unduly prejudicial to the same extent. As the Bissell mine is also served by the Illinois Central through rates in connection with the Terminal to points reached by or in connection with the former would result in short hauling that carrier. We, therefore, find that the rates on this traffic by way of the Terminal from Bissell to points in other states, except in connection with the Illinois Central, are, and for the future will be, unduly prejudicial to the same extent as from Colliery. The present record affords no basis for a finding with respect to the reasonableness of the rates assailed or the damage, if any, arising from the maintenance thereof. The case will be set for further hearing to develop these facts.

An appropriate order will be entered.

No. 10225.

TRANTUM & DANZER, INCORPORATED,
v.
NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY.

Submitted December 22, 1919. Decided March 20, 1920.

Following *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183, assessment of demurrage charges on cars held at reconsignment point because of embargo at the points to which reconsignment was ordered found to have been illegal, in the absence of tariff provision therefor. Reparation awarded.

J. F. Highlands for complainant.

George R. Allen for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. Exceptions thereto were filed by the defendant.

Trantum & Danzer, Incorporated, a corporation dealing in lumber at Hagerstown, Md., by complaint filed July 28, 1918, alleged that demurrage charges in the sum of \$237, collected by defendant for the detention at Cape Charles, Va., of 19 cars of lumber shipped in November, 1916, and January, February, and March, 1917, from points in North Carolina and South Carolina were unreasonable and unduly discriminatory, and asked for reparation. On May 1, 1919, and prior to the date of hearing, William Danzer & Company, Incorporated, succeeded to all the assets and liabilities of complainant. At the hearing it developed that the question for determination is whether any demurrage charges should have been imposed, the measure of the charges not being questioned.

The cars were originally billed to Cape Charles, and in most instances prior to or upon their arrival at that point complainant ordered their diversion or reconsignment to various destinations, chiefly to points in New York and New Jersey. At the time these shipments left the points of origin and when the orders for reconsignment were given the destinations were under embargo and the demurrage charges in issue, except a small portion assessed on three

or four of the cars as the result of delayed reconsigning instructions, accrued during the periods when the cars were held at Cape Charles awaiting carriers' permits for forwarding.

Defendant's tariffs in effect when the shipments moved contained no provision that it would not reconsign to an embargoed point. Its governing demurrage rules provided that they would apply to "cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose." Except in the instances mentioned, none of the cars was held for any of the purposes contemplated by the demurrage rules.

The defendant's contention in this case is the same as it made in *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183. In that case we found that demurrage charges assessed by it at Cape Charles on various carloads of lumber during periods when cars were held there because of embargoes in effect at the points to which the shipments were reconsigned were illegal, there being no provision in defendant's tariffs to the effect that it would not reconsign to embargoed points.

Following the case cited and upon the record we find that the collection of so much of the demurrage charges in issue as were assessed for the detention of the cars at Cape Charles after the reconsigning orders were received by the defendant was illegal; that the complainant made the shipments as described and paid and bore the charges herein found to have been illegal; and that Trantum & Danzer, Incorporated, or its lawful successor in interest, is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and a statement should be prepared and submitted to defendant for verification, showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

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No. 10593.

MERIDIAN CELLULOSE COMPANY ET AL.

v.

DIRECTOR GENERAL, CANADIAN PACIFIC RAILWAY
COMPANY, ET AL.

Submitted September 12, 1919. Decided March 20, 1920.

Rate of \$1.895 per 100 pounds, collected on a return movement of cotton linters from Nobel, Ontario, to Meridian, Miss., found not unreasonable. Complaint dismissed.

Nuel D. Belnap, John S. Burchmore, and Luther M. Walter for complainants.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainants are two Mississippi corporations which, at the time of filing their complaint on April 25, 1919, were engaged in buying and selling cotton linters and other cotton products. They allege that the rate charged by defendants for the transportation of five carloads of cotton linters shipped from Nobel, Ontario, to Meridian, Miss., in September and October, 1918, was unreasonable, in violation of section 1 of the act to regulate commerce and of section 10 of the federal control act, and ask for reparation. The Meridian Cellulose Company is the one chiefly interested and will be called the complainant. Rates will be stated in amounts per 100 pounds.

The shipments originated at Meridian and moved to Nobel. They were rejected there and returned to Meridian over the defendant carriers' lines through Cairo, Ill. Charges for the return movement were collected at the legally applicable rate of \$1.895, made on a combination of the fourth-class rate, official classification, 64.5 cents, from Nobel to Cairo, and the first-class rate, southern classification, of \$1.25 beyond. Complainant attacks the reasonableness of the rate as a whole but makes no criticism of the factor from Nobel to Cairo, the principal cause of complaint being the \$1.25 rate from Cairo to Meridian.

Prior to June 25, 1918, cotton linters were rated fourth class in the official classification and sixth class in the southern classification. Thereafter, following General Order No. 28 of the Director General of Railroads, cotton linters were accorded the rates on cotton, which resulted in an increase in rating of cotton linters to first class in southern classification. Cotton linters, which are the short fibers obtained from the cotton seed by a further process after the cotton has been passed through the gin, are used in the manufacture of certain explosives, and of mattresses, artificial leather, and some felt. The value of linters is much less than that of cotton, and, generally speaking, they are not adaptable to the same uses as cotton. A rate of \$1.105 was contemporaneously in effect on cotton linters from Meridian to Nobel, and this is contrasted with the rate of \$1.895 applicable in the reverse direction. The \$1.25 class-rate factor from Cairo to Meridian is also compared with a commodity rate of 65 cents applying in the reverse direction. If the sixth-class rating on linters had remained in effect after June 25, 1918, the factor from Cairo to Meridian would have been 51.5 cents and the entire rate from Nobel to destination \$1.16, which complainant suggests would have been a reasonable rate to apply to these shipments. Other commodities which are similar to cotton linters—e. g., cotton motes, cotton waste, cotton sweepings, cotton-gin flue cleanings, and cotton-hull shavings—are rated sixth class in the southern classification. The rate complained of yielded ton-mile earnings of 28.8 mills for 1,317 miles as against 17.6 mills under a \$1.16 rate. The first-class rate of \$1.25 from Cairo to Meridian yields ton-mile earnings of 68.1 mills for 367 miles.

Complainant's witness admitted that no other cotton or linters had ever moved from Nobel to Meridian and that he did not expect another movement.

Defendants insist that the sixth-class rating formerly applied to linters was too low, established as it was at a time when no use for the commodity had been found, but that in recent years its use had been developed.

They compared the first-class rate of \$1.25 from Cairo to Meridian, 367 miles, with first-class rates between other points in southern classification territory for approximately the same distance in support of their contention that the \$1.25 rate from Cairo to Meridian is not unduly high as a class rate. Defendants also deny any significance to the discrepancy between the northbound and southbound rates because practically the entire movement is northbound.

In *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29, we said:

A rate in one direction in excess of the rate between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate, especially where it is a class rate and the movement of the particular traffic is not of sufficient volume to warrant the establishment of a commodity rate.

In *Louisiana Cotton*, 46 I. C. C., 451, decided July 17, 1917, we approved the same rating on linters as on cotton despite the lower value of linters, and said:

Linters are cotton; they are baled and compressed in the same manner as cotton; both weigh about the same per bale and are handled under the same conditions, except as to the amount of the insurance risk. Rates on linters the same as those on cotton have been approved by us in other territories and we find that this adjustment is reasonable and proper.

This parity of rating was established under General Order No. 28 of the Director General. No complaint is made against the reasonableness of first-class rating on cotton, and the first-class rate from Cairo to Meridian is shown to compare favorably with the same rate for similar distances in southern classification territory.

Upon this record we find that the rate complained of was not unreasonable. The complaint will be dismissed.

57 I. C. C.

No. 10635.

WRIGHT TIE COMPANY

v.

BATESVILLE SOUTHWESTERN RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted December 15, 1919. Decided March 20, 1920.

Rates on crossties, in carloads, from points in Mississippi to destinations in Ohio and Indiana found not to have been unreasonable or otherwise unlawful. Complaint dismissed.

Irvin H. Gamble for complainant.

Clinton H. McKay for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A report proposed by the examiner was served upon the parties. No exceptions were filed.

The complainant, a corporation engaged in buying and selling crossties at St. Louis, Mo., by complaint filed March 19, 1919, alleges that the rates charged by defendants on crossties, in carloads, shipped during 1916, 1917, and 1918, from points in Mississippi on the Illinois Central and the Yazoo & Mississippi Valley railroads to various destinations in Ohio and Indiana, based on the combination of local rates to and beyond Louisville, Ky., were unjust and unreasonable in violation of section 1 of the act to regulate commerce, to the extent that they exceeded the joint through rates alleged to have been contemporaneously applicable by way of the defendants' lines through Louisville. It also alleges that the rates charged exceeded the joint through rates from points in Mississippi on the Southern Railway in Mississippi and the Mobile & Ohio Railroad at which complainant has competitors, these rates being applicable in connection with the Illinois Central via Louisville and the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad. Reparation is asked.

The ties were sold by complainant to the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company under contracts which provided for delivery to the purchaser f. o. b. cars Louisville. The shipments moved over the Yazoo & Mississippi Valley and the Illinois

Central to Louisville, where they were delivered to the purchaser. The movement was under through bills of lading which specified this routing and designated points in Ohio and Indiana as destinations. The purchaser deducted the freight charges up to Louisville from the price of the ties and remitted the balance to complainant. These charges were computed upon the basis of the established rates to Louisville which were in representative instances 15 and 16 cents per 100 pounds.

In support of its contention that the rates charged exceeded the joint rates over defendants' lines complainant shows that from the points of origin to the destinations appearing in the bills of lading there were applicable via Cairo, Ill., over the route of movement joint rates lower than the combinations on Louisville. It insists that these rates were applicable through Louisville by way of Cairo. The tariffs qualify the application of these rates as follows:

Via I. C. R. R. and (or) Y. & M. V. R. R. direct to Cairo (Mounds), Ill., I. C. R. R. or connections beyond.

The word "beyond" as used in the tariff provision quoted implies a continuous movement beyond Cairo. A movement from Cairo to Louisville over the route designated by complainant would entail a back haul of about 14 miles. Rates in accordance with complainant's routing instructions were not therefore applicable through Louisville by way of Cairo.

Complainant also shows that shipments of crossties from points on the lines of the Mobile & Ohio and the Southern Railway in Mississippi could move through Louisville to the Indiana destinations and obtain the benefit of joint rates in which the Illinois Central and the Yazoo & Mississippi Valley participated. Such joint rates were not confined to shipments moving through Cairo, were applicable via Louisville, and were lower than the combinations based on the latter gateway.

Although complainant alleges that the through rates charged were unreasonable, it bore only the charges accruing up to Louisville and the evidence offered by it was for the purpose of showing that these charges were unreasonable and unjustly discriminatory. It urges that the joint rates from points in Mississippi to points in Ohio and Indiana are divided by giving to the lines north of Louisville their full locals, the result being that where, as in the present instance, crossties are sold under contract calling for delivery f. o. b. Louisville, shippers located on the Mobile & Ohio or Southern Railway would settle with the vendee railroad on the basis of paying the divisions of the joint rates accruing to the lines south of Louisville which would be lower than the local rates to Louisville. It is complainant's position, therefore, that in the instant case it is entitled

to settlement with the tie purchaser upon the basis of the carrier's divisions of the joint rates up to Louisville. This contention is not within the scope of the complaint or of our jurisdiction.

Defendants state that they were unable to control the rates from points on the Mobile & Ohio and Southern railroads to these destinations for the reason that on shipments originating on those roads there were other and direct routes available over other lines. They also offered evidence tending to show that the rates on crossties from the points of origin to Louisville compared favorably with the rates on crossties generally applicable throughout the south.

Upon the record we find that the rates assailed were not unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

57 I. C. C.

No. 10766.
QUINTAL & LYNCH, LIMITED,
v.
FLORIDA EAST COAST RAILWAY COMPANY AND
DIRECTOR GENERAL.

Submitted February 18, 1920. Decided March 20, 1920.

Complaint alleging that demurrage charges collected at Key West on three carloads of hay shipped in bond from Canada, through the United States, to Habana, Cuba, were unjust and unreasonable and wrongfully assessed, dismissed for want of jurisdiction.

Everett, Clarke & Benedict by *H. S. Hertwig* for complainant.
Frederick C. Bryan for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainant is a corporation engaged in the business of buying, selling, and exporting hay and other commodities, with its principal office at Montreal, Canada. By complaint filed July 17, 1919, it alleges that demurrage charges amounting to \$425 collected by the Florida East Coast Railway Company, hereinafter referred to as defendant, at Key West, Fla., in November, 1917, on three carloads of hay shipped through this country in bond on through bills of lading from St. Lamberts, Province of Quebec, Canada, to various consignees in Habana, Cuba, were unjust and unreasonable, and wrongfully assessed. Reparation is asked.

The original bills of lading specified Habana as destination and the shipments moved in bond from St. Lamberts and via the lines of various carriers in the United States. Defendants received the shipments at Jacksonville for export at Key West and the demurrage charges accrued while the cars were held at that port awaiting export licenses, necessary under the President's proclamation for the enforcement of the espionage act, before the defendant could make clearance of the shipments for export. The shipments ultimately were delivered at Habana in bond.

In *Canales v. G., H. & S. A. Ry. Co.*, 37 I. C. C., 573, we said:

The overcharges in issue accrued within the United States on traffic moving from a point in Mexico through the United States to another point in Mexico. Such transportation is not embraced within the terms of the act to regulate commerce. In *U. S. v. P. & R. Co.*, 188 Fed. Rep., 484, it was held that the so-called Elkins act is inapplicable to the continuous transportation of goods in bond from a foreign country through the United States to a foreign country. Following that case, in *Seymour v. M. L. & T. R. R. & S. S. Co.*, 35 I. C. C., 492, which involved alleged overcharges on shipments of sugar from Germany through New Orleans to Eagle Pass and El Paso, destined to points in Mexico, we said that—

"The sugar was transported from a nonadjacent foreign country through the United States to destinations in an adjacent foreign country. We entertain no doubt that the regulatory power of Congress extends to the transportation within this country, but apparently the jurisdiction of this Commission does not."

Following the *Canales Case*, *supra*, and the cases therein cited, we find that the shipments in question are without our jurisdiction.

An order dismissing the complaint will be entered.

57 I. C. C.

No. 10620.

RIVERSIDE PORTLAND CEMENT COMPANY

v.

RIVERSIDE, RIALTO & PACIFIC RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted September 5, 1919. Decided March 20, 1920.

Rates on cement, in carloads, from Crestmore, Calif., to Miami and other destinations in the state of Arizona found not to have been unreasonable or unjustly discriminatory. Complainant not shown to have been damaged by reason of any undue prejudice that may have existed. Complaint dismissed.

O. T. Helpling and P. H. Campbell for complainant.

Dana T. Smith and Frank B. Austin for defendants.

R. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and sale of portland cement at Crestmore, Calif. By complaint seasonably filed it alleges that the rates charged by defendants for the transportation of numerous carload shipments of cement from Crestmore to Miami, Globe, Tucson, Nogales, Yuma, Morales, Willcox, Red Rock, Casa Grande, Fort Huachuca, Bisbee, and Douglas, Ariz., between January and October, 1916, were unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rates contemporaneously in effect from Colton, Riverside Junction, and San Pedro, Calif., to the same destinations. Reparation only is asked. Rates will be stated in cents per 100 pounds.

No cement moved from Riverside Junction or San Pedro and we confine our attention to the rates from Crestmore and Colton.

Crestmore is about 60 miles east of Los Angeles, Calif., on the Riverside, Rialto & Pacific Railroad, now owned and operated by the Los Angeles & Salt Lake Railroad Company. The shipments moved over the line of that carrier to Bloomington, Calif., a distance of 3 miles, thence 4 miles east over the Southern Pacific in local trains to Colton, where the cars were included in trains made up at that point. From Colton the shipments moved over the lines of

defendants to the destinations named, all of which are in the southern part of Arizona on the lines of the Southern Pacific, Arizona Eastern, and El Paso & Southwestern railroads. The shipments were charged combination rates composed of the local rate of 2.5 cents to Bloomington, and the rates beyond, which were the same from Bloomington as from Colton. The record shows that the distances from Crestmore to the destinations range from 200 to 543 miles, and the rates from 27.5 to 32.5 cents.

When the shipments moved the rates were the same from Crestmore and Colton to points on the Southern Pacific from El Casco, Calif., 15 miles east of Colton, to and including Colorado, Calif., a point on the California-Arizona state line 192 miles east of Colton; also from Crestmore and Colton to points on the Arizona Eastern north of Maricopa, Ariz., to and including Winkelman, Ariz., 471 miles east of Colton. From Crestmore to Yuma, Ariz., 193 miles east of Colton, to Maricopa, junction point of the Southern Pacific and Arizona Eastern 356 miles east of Colton, and to certain other points of destination farther east including those covered by this complaint, the rates from Crestmore were 2.5 cents higher than from Colton. Effective October 25, 1916, the defendants established rates from Crestmore to these points upon the Colton basis. The rates now in force are not attacked.

The defendants assert that the adjustment whereby rates from Colton and Crestmore to certain California points were placed on a parity was brought about by a decision of the Railroad Commission of California rendered in 1912. The Crestmore differential to Arizona points of 2.5 cents over Colton was not disturbed until late in 1915, when the Atchison, Topeka & Santa Fe Railway, not here defendant, established the same rates from Crestmore as from Colton to Phoenix, Ariz., and other points on the Arizona Eastern north of Maricopa and west of and including Winkelman. The Southern Pacific, in order to meet the competition of the Santa Fe, adjusted its rates to conform to those established by that carrier. They submitted comparisons of the rates on cement from Crestmore to destinations named in the complaint with similar rates from El Paso, Tex., to the same and other Arizona points, which show that the latter are somewhat higher for like distances.

There is no evidence of record tending to show that the combination rates from Crestmore or their component parts, were, during the period covered by the complaint, unreasonable *per se*. On the contrary, the evidence adduced as to prevailing rates on cement from other producing points, and rates on analogous articles in the same general territory, indicates that the rates assailed were not unduly high.

Complainant rests its case chiefly upon the allegation of undue prejudice. The rates from Crestmore are urged to have been unreasonable, not because they are considered excessive, but because they were higher than the rates from Colton. Complainant's position is made clear by its principal witness, who stated that the Crestmore rates "are unreasonable because of the discrimination." On this point it suffices to say that complainant has failed to prove with the certainty required by law that it was damaged by reason of the difference in the rates from Crestmore and Colton.

We find that the rates assailed were not unreasonable or unjustly discriminatory. Any undue prejudice which may have existed has now been removed, and complainant has not shown that it has been damaged thereby. The complaint will be dismissed.

57 I. C. C.

No. 10630.

HAARMANN VINEGAR & PICKLE COMPANY

v.

DIRECTOR GENERAL, NORTHERN PACIFIC RAILWAY
COMPANY, ET AL.

Submitted November 25, 1919. Decided March 20, 1920.

Rate on two carload shipments of pickles, in brine, from New York Mills, Minn., to Omaha, Nebr., found to have been unreasonable. Reparation awarded.

C. E. Childe for complainant.

Fred G. Wright for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

The complainant, a corporation engaged in the pickle business at Omaha, Nebr., seeks reparation on two carloads of pickles, in brine, shipped October 11 and 18, 1918, from New York Mills, Minn., to Omaha, alleging that the combination rate of 36 cents per 100 pounds based on Wadena, Minn., was unjust and unreasonable to the extent that it exceeded the commodity rate of 29 cents contemporaneously applicable from Wadena, and subsequently established from New York Mills. Rates will be stated in cents per 100 pounds.

New York Mills is located on the main line of the defendant Northern Pacific Railway, 13 miles west of Wadena. The shipments, weighing 46,375 and 50,000 pounds, respectively, moved over the defendants' lines from New York Mills to Omaha, 517 miles, via the short lines. Transportation charges were collected based on the actual weights and the applicable combination rate of 36 cents, made up of the fifth-class rate of 7 cents to Wadena plus a commodity rate of 29 cents beyond. During 1918 complainant established a salting station at New York Mills and intended to make application for the same commodity rate to Omaha from that point as applied from Wadena, headquarters for its several other salting stations located within a radius of a few miles. The application was overlooked and not made until after these shipments had moved. On December 5, 1918, defendants established a rate of 29 cents, minimum 50,000 pounds, from New York Mills to Omaha, and this rate is still in effect.

At the time of movement the 29-cent rate applied on this traffic to Omaha from numerous other producing points in the vicinity of New York Mills, including Henning, Minn., a point 16 miles beyond Wadena on a branch line of the Northern Pacific, while from other Minnesota points a rate of 23 cents applied to the same destination for distances ranging from 451 to 481 miles.

Defendants state that the fifth-class rate from New York Mills to Omaha was 55.5 cents, and contend that the rate charged is enough of a concession from the classification basis; that the basis of rates on pickles, in brine, from Minnesota points to Omaha was purposely made low, when first established a number of years ago, in response to representations made by complainant to the Great Northern Railway, not a defendant in this case, and that the pickle industry, then in its infancy, required very low rates if the commodity was to move. That carrier first established a commodity rate of 22.5 cents to Omaha from Hewitt, Minn., 8 miles south of Wadena. Next, a rate was desired from Sebeka, Minn., another point on the Great Northern, 14.3 miles beyond Wadena. The Hewitt rate was used as a basis, and the commodity rate from Sebeka was made one-half cent higher, or 23 cents. Wadena was intermediate to Sebeka on the Great Northern and took the same rate as Sebeka via that line. When a salting station was later established at Wadena the Northern Pacific met the 23-cent rate thus fixed by the Great Northern. Under General Order No. 28 the 23-cent rate was increased to 29 cents. The rate assailed yielded 13.9 mills as compared with 11.2 mills under the present rate and 11.5 and 11.1 mills under the 20-cent rate in effect at the time of movement from Wadena and Henning, respectively.

The examiner who heard the evidence recommended in his proposed report that we should find the rate assailed not to have been unreasonable. No exceptions were filed, but in view of the fact that the 29-cent rate contemporaneously applied from other producing points in Minnesota more distant from Omaha than is New York Mills, and that the same rate was subsequently established from the latter point, we are of opinion that during the period of movement it was unreasonable to maintain from New York Mills to Omaha a rate 7 cents higher than that applicable from the adjacent points within the same territory.

We find that the rate assailed was unreasonable to the extent that it exceeded 29 cents per 100 pounds, minimum 50,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation in the sum of \$56.95, with interest.

An appropriate order will be entered.

No. 10769.
KEY-JAMES BRICK COMPANY
v.
SOUTHERN RAILWAY COMPANY AND DIRECTOR
GENERAL.

Submitted January 15, 1920. Decided March 20, 1920.

Rates on common brick, in carloads, from Chattanooga, Tenn., to Asheville, N. C., found to have been and to be unreasonable to the extent that they exceeded and exceed the aggregate of the intermediate rates contemporaneously in effect. Reparation awarded and measure of reasonable maximum rate prescribed for the future.

John S. Fletcher for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainant is a corporation engaged in the manufacture of brick at Chattanooga, Tenn. By complaint seasonably filed it alleges that the rate charged by the defendants on 13 carloads of common brick shipped from Chattanooga, Tenn., to Asheville, N. C., between October 5, 1916, and January 18, 1917, inclusive, was unreasonable and in violation of the fourth section of the act to regulate commerce to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Knoxville, Tenn. Rates will be stated in cents per 100 pounds.

The shipments moved over the Southern Railway from Chattanooga to Asheville and charges were collected for the transportation to Asheville at the applicable commodity rate of 12 cents. The intermediate rates contemporaneously in effect over the route of movement were 3 cents from Chattanooga to Knoxville, and 4.6 cents beyond, a total of 7.6 cents. Complainant seeks reparation upon this basis. The present rate as increased under General Order No. 28 of the Director General of Railroads is also in excess of the aggregate of the intermediate rates.

The defendants were not represented at the hearing, but by letter of record conceded the unreasonableness of the rate assailed to the extent that it exceeded the aggregate of the intermediate rates and are willing to pay reparation. The fourth section departure presented is, with similar adjustments, at present before us, and therefore no fourth section application was set for hearing with this case.

The bills of lading and freight bills in evidence indicate that all of the shipments were originally consigned to Asheville and that the transportation of 10 of them ended there. It appears that the other three were reconsigned from Asheville to some other point, and that in addition to charges to Asheville at the 12-cent rate a reconsigning charge of \$5 and some additional transportation charges were collected. The complainant, who was the shipper, was unable to give any details with respect to the handling of these shipments at Asheville, the nature of the transaction under which the movement beyond was made, or the ultimate destination. Under these circumstances it can not be determined whether or not the 12-cent rate was legally applicable on these shipments to Asheville.

We find that the rate assailed was, and that the present rate is and for the future will be, unreasonable to the extent that the former exceeded and that the latter exceeds or may exceed the aggregate of the intermediate rates subject to the interstate commerce act, contemporaneously applicable over the route of movement to and from Knoxville; that complainant made shipments of brick from Chattanooga to Asheville and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record and the complainant should comply with rule V of the Rules of Practice. The statement thereunder should include the three shipments reconsigned from Asheville if, upon investigation, it develops that the rate herein found unreasonable was applicable to them.

An appropriate order will be entered.

57 I. C. C.

No. 10692.
COHEN-SCHWARTZ RAIL & STEEL COMPANY
v.
DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted November 3, 1919. Decided March 20, 1920.

Rate on scrap iron, in carloads, from St. Louis, Mo., to Litchfield, Ill., found unreasonable to the extent that it exceeded and exceeds the sum of the intermediate rates subject to the act contemporaneously in effect. Reparation awarded.

Philip G. Safford for complainant.

E. A. Smith for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, ATCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions thereto were filed.

The complainant, a corporation, by complaint filed June 7, 1919, alleges that the rate charged on seven carloads of scrap iron shipped over defendants' lines during the latter half of 1917 from St. Louis, Mo., to Litchfield, Ill., was unjust and unreasonable in violation of section 1 of the act to regulate commerce. It prays for reparation and other relief.

The shipments moved over the line of the Terminal Railroad Association of St. Louis to East St. Louis, Ill., and thence as routed by the complainant over the Illinois Central Railroad. The rate paid and applicable under the tariff was the ninth-class rate of 7.2 cents per 100 pounds, under the Illinois classification, or \$1.6128 per long ton, for a distance of 59 miles. Contemporaneously there were in effect over the route of movement a rate from St. Louis to East St. Louis of 1.5 cents per 100 pounds, or 33.6 cents per long ton, and a rate from East St. Louis to Litchfield applicable on interstate traffic of 3.2 cents per 100 pounds, or 71.68 cents per long ton, making a total combination rate of \$1.0528 per long ton. The contemporaneous rate by way of the Illinois Central from Litchfield to St. Louis was 84 cents per long ton, but there has been no movement under it for at least a year. By way of the Wabash Railway the 84-cent rate applied

57 I. C. C.

in both directions between St. Louis and Litchfield. The complainant asks reparation upon the basis of 84 cents, but offered no other evidence in support of the reasonableness of this basis.

As bearing on the 84-cent rate defendants cite other rates on scrap iron in effect for interstate application when the shipments moved, which they maintain are typical of the rates on that commodity in this region and under which a substantial amount of traffic moves, as follows:

From—	To	Miles	Rate per long ton
St. Louis, Mo.....	Springfield, Ill....	172	\$1.14
Chicago, Ill.....	Rockford, Ill.....	87	1.06
Springfield, Ill.....	Bloomington, Ill....	62	1.06
Kankakee, Ill.....	Chicago, Ill.....	66	1.06
Bloomington, Ill.....	Decatur, Ill.....	44	1.06

Defendants express willingness to make reparation on the basis of the combination of \$1.0528 contemporaneously applicable to and from East St. Louis.

We find that the rate charged was, is, and for the future will be, unreasonable to the extent of its excess over the aggregate of intermediate rates subject to the interstate commerce act contemporaneously in effect to and from East St. Louis by the route of movement. We further find that the complainant bore the freight charges thereon; that it has been damaged in an amount represented by the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon a record, and the complainant should prepare and submit to defendants for its filing a statement showing the details of the shipments in question with the aid of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.
S. I. C. C.

No. 10714.

UNITED VERDE EXTENSION MINING COMPANY

v.

UNITED VERDE & PACIFIC RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted December 29, 1919. Decided March 20, 1920.

Rates on coal, in carloads, from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., not shown to have been or to be unreasonable. Complaint dismissed.

E. H. B. Avery for complainant.

W. M. Petcolas, D. W. Harrington, W. C. Barnes, G. H. Baker,
and *E. W. Camp* for Director General, Atchison, Topeka & Santa Fe Railway Company, and El Paso & Southwestern Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.
HALL, *Commissioner*:

A report was proposed by the examiner to which the complainant and intervener filed exceptions. With some modifications the statement of facts and conclusions proposed are made the basis of this report.

Complainant is a corporation engaged in mining and smelting copper ore at Jerome, Ariz. It alleges that defendants' rates on various shipments of coal, in carloads, from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., were unjust and unreasonable, and asks for reparation and the establishment of reasonable rates for the future. The Arizona Corporation Commission intervened in support of the complaint but was not represented at the hearing.

Clarkdale is on a branch line of the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, 38 miles southeast of Cedar Glade, Ariz., the junction with the main line, and 690 miles from Dawson. Jerome is on the United Verde & Pacific Railway about 26 miles from Jerome Junction, the connection with the Santa Fe. Jerome Junction is 670 miles from Dawson. The shipments moved over the El Paso & Southwestern to French, N. Mex., a distance of 19 miles, and thence over the Santa Fe as follows: To Clarkdale, 150 tons in October, 1917, and 4,502 tons in October,

November, and December, 1918; to Jerome Junction, and thence over the United Verde & Pacific Railway to Jerome, 42 tons in October, 1918. The same rates applied and now apply from Dawson to Clarkdale and Jerome Junction. Throughout this report rates will be stated in amounts per net ton.

Freight charges were collected on the shipments to Clarkdale at the applicable joint rates of \$7.65 in effect prior to June 25, 1918, and \$8.20 in effect thereafter. On the shipment to Jerome freight charges were collected at a combination rate of \$9.70, composed of \$8.20 to Jerome Junction and \$1.50 beyond. No complaint is made with respect to the latter factor. Joint commodity rates on coal from Dawson to Clarkdale and Jerome Junction were first established in 1912 and were then \$8.05. They were subsequently reduced to the basis in effect when these shipments began.

Complainant compares the rate of \$7.65 in effect prior to June 25, 1918, from Dawson to Clarkdale and Jerome Junction with contemporaneous coal rates from Dawson and Trinidad, Colo., to Deming, N. Mex.; Cananea, Mexico; Bisbee, Globe, Douglas, Miami, and other points in southern Arizona, ranging from \$3.20 to \$6.45 for distances from 460 to 796 miles. The rate from Dawson to Clarkdale yielded 11 mills per ton-mile, and those compared therewith an average of about 8 mills. Complainant urges that upon the basis of these earnings the rates assailed should not have exceeded \$5.50 per ton prior to June 25, 1918, and thereafter \$5.50 plus the increase provided by General Order No. 28. Stress is laid upon the fact that while the rates on coal from and to the points used in comparison were generally 10 cents, and in three instances 70 to 85 cents, lower than the rates contemporaneously in effect on coke, the rate on coal from Dawson to Clarkdale was \$1.10 higher than the rate of \$6.55 on coke for the same haul. Complainant further cites a rate on coal of \$6.65 per ton from Waldo, N. Mex., to San José and Santa Barbara, Calif., for hauls 500 to 700 miles longer than from Dawson to Clarkdale and Jerome Junction, and rates from Trinidad of \$5.73 to Bisbee, \$5.80 to Morenci, Ariz., and \$5.91 to Cananea, Mexico, distances of 682 miles, 670 miles, and 717 miles, respectively.

Ordinarily complainant secures its coal from Gallup, N. Mex., a producing point intermediate between Dawson and Clarkdale. Gallup is over 300 miles nearer than Dawson to Clarkdale. The coal rates from Gallup to Clarkdale and Jerome Junction prior to June 25, 1918, were \$3.50 and \$3.25 and are now \$4 and \$3.80, respectively. The shipments moved from Dawson because of temporary shortages at Gallup, due to labor conditions, and the record shows that these were the only shipments of coal ever received by complainant from Dawson; that the movement from Dawson to points on the Santa Fe

is irregular, a car or two moving at a time; and that there is a regular and large volume of coal moving from Dawson over the El Paso & Southwestern to southern Arizona.

The comparisons made by complainant with rates to New Mexico and southern Arizona points are far from convincing. There is a regular movement in large quantities from Dawson to those points; less difficult operating conditions are encountered than in the movement from Dawson to Clarkdale over heavy mountain grades by way of Glorieta, N. Mex., the highest point on the Santa Fe; and competition with oil from California and Texas is encountered in southern Arizona.

On its brief of exceptions complainant urges that coal from Trinidad to southern Arizona and Mexican points moves via the Santa Fe over the Glorieta pass, as does coal from Dawson to Clarkdale and Jerome Junction, and, in addition, moves over the still more difficult grades of the Raton pass. It is true that the rates cited apply over this route, but they also apply over other routes in which the Santa Fe does not participate, and the uncontradicted testimony of defendants' witness is that coal from Trinidad and Dawson to southern Arizona and Mexican points moves over routes other than that by way of the Glorieta pass, and less difficult than the route of movement in this case.

As to the rate on coke from Dawson to Clarkdale defendants explain that the Gallup coal is not a coking coal; that a low rate was established from Dawson, which produces coking coal, to Glendale, Ariz., in an endeavor to maintain a beet-sugar mill there; that this rate was also applied to Clarkdale; and that as coal and coke do not ordinarily move from Dawson to Clarkdale the usual basis for a relationship between the coal and coke rates is wanting. They say that the rates from Waldo and other mines in northern New Mexico to the California points are depressed on account of competition with coal from Utah and Wyoming and coals water borne into San Francisco from British Columbia.

Upon consideration of the record we find that the rates attacked are not shown to have been or to be unreasonable.

An order will be entered dismissing the complaint.

No. 9671.¹

SIoux CITY CONCRETE PIPE COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted June 24, 1919. Decided March 5, 1920.

Rates on concrete drain tile, in carloads, from Sioux City, Iowa, to points in South Dakota, east of the Missouri River, found to have been and to be unduly prejudicial to complainant and unduly preferential to competitors located at other drain-tile manufacturing points in Iowa and Minnesota. Reparation denied.

C. E. Childe for complainant.

O. W. Dynes for defendants; *C. A. Lahay* for Chicago, Milwaukee & St. Paul Railway Company; *A. F. Cleveland* for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company; and *A. J. Grummett* for Great Northern Railway Company.

A. V. Fletcher for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions were filed by the parties. On June 6, 1919, the Director General of Railroads was made a party defendant.

The complainant, a corporation engaged in the manufacture and sale of concrete drain tile and other concrete products at Sioux City, Iowa, alleged that the rates for the transportation of concrete drain tile in carloads from Sioux City to points in South Dakota east of the Missouri River were unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates for the future and reparation were asked.

While the evidence contains references to the alleged unreasonableness of the rates, the primary purpose of the complaint is to present to the Commission a situation which complainant believes to be unduly prejudicial to its interests and unduly preferential to its

¹ The report also embraces a portion of Fourth Section Application No. 2806.

competitors engaged in the tile industry in Iowa and Minnesota. The competing points particularly mentioned in the complaint are Mason City and Fort Dodge, Iowa; St. Paul, Minneapolis, Hopkins, Red Wing, Zumbrota, Wanamingo, Austin, Mankato, Chaska, and Shakopee, Minn. With the exception of a concrete tile industry at Mankato, complainant's competitors manufacture clay tile. Both concrete and clay tile are used in the destination territory involved and are said to be highly competitive.

It was stated on behalf of complainant that the value of concrete and clay tile is about the same, and that concrete tile weighs about 20 per cent more than clay tile of the same size, resulting in higher charges on the former for transporting the same quantities. It appears that the breakage on shipments of concrete tile is much less than on clay tile. It was stated that Sioux City is a large live-stock market and that there is a constant movement of stock cars from Sioux City to points in South Dakota. These cars are utilized by complainant to a great extent, whereas with the exception of St. Paul this transportation economy is not present with respect to shipments from competing points.

Complainant's primary contention is that the Sioux City rates are relatively higher than the rates from competing points and are not properly aligned with respect to distance and other conditions so as to accord to Sioux City the advantage to which it is entitled by reason of its proximity to the South Dakota market.

Several exhibits were filed showing the distances and present rates on drain tile from Sioux City to representative points. They also show the present class E rates; the class E rates for the same distances prescribed in *The Missouri River-Nebraska Case*, 40 I. C. C., 201, as reasonable maximum rates between Missouri River points and destinations in Nebraska; the class E rates for distance of 200 miles or over prescribed in *Minneapolis Civic & Commerce Assn. v. C. M. & St. P. Ry. Co.*, 30 I. C. C., 663, from Minneapolis and St. Paul, Minn., to destinations in South Dakota on the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee; also the drain tile distance scale of rates maintained by defendants on interstate traffic between points in Iowa, Minnesota, and South Dakota. There is little or no difference between the present commodity rates and the drain tile distance scale rates from Sioux City. Wherever there is a difference the tariffs provide that the lower rate shall apply.

Defendants assert that drain tile is manufactured at Hopkins, Austin, Mankato, and Mason City only. Fort Dodge is not served by any of the defendants. Aside from Sioux City defendants' records show that Mason City is the only point named from which drain tile is

shipped to the destination involved herein. During 1916 there were shipped over the Milwaukee 80 carloads of drain tile from Sioux City and 40 carloads from Mason City. The number of shipments moving over the lines of the other defendants is not stated of record. On complainant's exhibits the Minnesota points are represented by St. Paul and Red Wing. The rate comparisons with respect to the preferred points show approximately the same results as are reflected by comparisons between rates from Sioux City and Mason City. In view of the above, the rate situation here complained of is shown in the following table. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918.

To—	From Sioux City.		From Mason City.		Difference over Sioux City.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Elk Point, S. Dak.....	21	4.5	203	7.5	182	3
Alcester, S. Dak.....	52	5.5	242	10.75	190	5.25
Canton, S. Dak.....	71	6.5	178	8.36	107	1.86
Harrisburg, S. Dak.....	82	7	197	9	108	2
Madison, S. Dak.....	132	8.5	239	11.5	116	3
Platte, S. Dak.....	150	9	318	12.5	168	3.5
Woonsocket, S. Dak.....	165	9.5	266	12.5	121	3
Elrod, S. Dak.....	201	10.75	308	12.5	107	1.75
Watertown, S. Dak.....	218	10	301	11.5	83	1.5
Anderover, S. Dak.....	245	11.5	352	13	107	1.5
Aberdeen, S. Dak.....	266	12	375	14	99	2
Hecle, S. Dak.....	303	13.25	399	14	96	.75

Complainant insists that the rates on drain tile from Sioux City should not have exceeded the class E rates contained in the Missouri River-Nebraska scale, and that to remove the preference in favor of its competitors the same scale should be applied from their shipping points. It is noted that from Sioux City to 50 points on the Milwaukee the application of the Missouri River-Nebraska scale would result in rates from 0.1 to 0.5 cent lower than the present rates in 18 instances; in rates from 0.1 to 2.6 cents in 25 instances; and in 7 instances the rates would be the same. If the same scale were applied from the Iowa and Minnesota competing points the spread in rates between those points and Sioux City would be materially increased.

Various exhibits were introduced by defendants comparing the rates on drain tile from Sioux City to South Dakota points with rates from drain-tile producing points in Iowa and Illinois to destinations in South Dakota, Iowa, Minnesota, Wisconsin, and Illinois. In approximately every instance the rate from Sioux City is the same or lower for equivalent distances. In this connection particular stress was laid upon the low density of traffic in South Dakota as compared with neighboring states. Sioux City is so close to the border of South Dakota that the movement of complainant's commodity is practically entirely within that state.

Defendants further point to the fact that in many instances the rates from Sioux City and Mason City are on a parity for similar distances, as will appear in the following table:

To—	From Sioux City.		To—	From Mason City.	
	Miles.	Rate.		Miles.	Rate.
Lake Preston, S. Dak.....	162	9.5	Fairview, S. Dak.....	175	7
Redfield, S. Dak.....	224	10.75	Altamont, S. Dak.....	231	10.75
Bristol, S. Dak.....	235	11.5	Flandreau, S. Dak.....	239	11.5
Elkton, S. Dak.....	238	11	Goodwin, S. Dak.....	239	11.5
Aberdeen, S. Dak.....	266	12	Manchester, S. Dak.....	272	12.5
Gettysburg, S. Dak.....	303	13.25	Doland, S. Dak.....	302	13.25
Mobridge, S. Dak.....	363	14	Aberdeen, S. Dak.....	386	14

This evidence would seem to indicate that the rates under attack are not unreasonable *per se*. However, as between the rates and distances from Sioux City and Mason City to the respective points it is apparent that the present adjustment is disadvantageous to Sioux City. For instance, the distance from Sioux City to Lake Preston over the Milwaukee is 162 miles, and the rate is 9.5 cents, while the distance from Mason City is 270 miles and the rate is 11.5 cents. The difference in distance is 108 miles, while the difference in the rates is 2 cents. An instance of a more extreme case is Gettysburg, S. Dak., a point local to the North Western. The distance from Sioux City is 303 miles and the rate is 13.25 cents, while the distance from Mason City is 397 miles and the rate is 14 cents. The difference in distance is 94 miles while the difference in the rate is but three-quarters of a cent.

Upon the record we find that the rates assailed were and are not unreasonable, but that they were, are, and for the future will be, unduly prejudicial to complainant and unduly preferential to drain-tile shippers at the competing points in Iowa and Minnesota, above referred to, to the extent that the rates from Sioux City to points to which the distances are the same were higher than the rates contemporaneously maintained from such other points, and to the extent that the rates from Sioux City to points to which the distances are less were not at least three-fourths of a cent per 100 pounds less, and to points to which the distances are greater were more than three-fourths of a cent per 100 pounds higher than the rates contemporaneously maintained from such other points for each 20 miles or fraction thereof that the distances are less or greater.

Only general testimony was offered with respect to the competition met from the various drain-tile-manufacturing points and no specific damage was proved; therefore, reparation will be denied.

From Sioux City to Watertown, S. Dak., a lower rate is maintained than to certain intermediate points. This departure from the pro-

visions of the fourth section is protected by application No. 2806, filed by the Milwaukee. A hearing was held February 16, 1916, but no relief was asked regarding the above-mentioned departure, nor was any justification offered. The application to that extent will therefore be denied.

Appropriate orders will be entered.

ATCHISON, *Chairman*, dissenting:

I do not agree with the majority in the holding that the record warrants a finding that the rates assailed were unduly prejudicial to complainant in comparison with the rates from competing points in Iowa and Minnesota.

The record clearly indicates to me that complainant's principal handicap in meeting the competition of the alleged preferred points is the greater weight of its product and the greater cost of manufacture. Complainant's tile weighs approximately 20 per cent more than that of its chief competitor, at Mason City, Iowa. It is made of concrete, which necessitates the transportation of the raw materials to Sioux City, while the tile of its chief competitor is made from clay located at the point of manufacture. These are commercial disadvantages, not due to transportation conditions, and can have no weight in determining the issues here presented. No effort was made by complainant to show a similarity of transportation conditions from Sioux City and the competing points of production to South Dakota.

No comparison is made in the majority report of the rates and relative distances from any of the alleged preferred points, with the exception of Mason City. Complainant's president was unable to state, when a witness before us, whether there were manufacturing plants at all of such points, or whether, assuming there were such plants, they bid in competition with the complainant. The defendants show that in 1916 and for part of 1917 there were no shipments of drain tile to points in South Dakota from any of these points, with the exception of Mason City. The majority report shows that the rates from Mason City and from Sioux City are substantially the same for similar distances, so that complainant, which is nearer to the destination territory than Mason City, now has lower rates to 78 of the 80 destination points in South Dakota shown in exhibits filed by it.

This record does not show that complainant has been injured or subjected to undue prejudice by reason of the rate adjustment, and the complaint should be dismissed.

No. 10048.

PNEUMATIC SCALES CORPORATION, LIMITED,
v.
ABERDEEN & ROCKFISH RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted November 15, 1919. Decided April 15, 1920.

Findings in prior report in this proceeding, 51 I. C. C., 686, affirmed.

Edgar Watkins for complainant.

Alexander H. Elder and *Robert W. Fyfe* for defendants.

W. D. Burr, James C. Jeffrey, Frank M. Swacker, and George B. Webster for various interveners.

C. J. Rixey, jr., for Director General of Railroads.

REPORT OF THE COMMISSION ON FURTHER HEARING.

McCHORD, *Commissioner*:

The original report in this proceeding was issued in 51 I. C. C., 686. On petition of complainant, the proceeding was opened for further hearing. A proposed report, prepared by the examiner who reheard the case, was served on the parties. Exceptions were filed by complainant and the case reargued before the entire Commission.

The carriers' tariffs provide rates for the transportation of articles in suitable containers, the charges under these rates to be calculated upon the gross weight of goods and containers. Complainant asks that freight charges on goods shipped in a steel container conforming to certain specifications be assessed on the basis of the net weight, excluding the weight of the container; and further asks that the returned empty container, knocked down, be accorded one-half of fourth-class rates in western and southern classification territories and fifth-class rates in official classification territory.

Complainant holds patents covering various parts and features of a collapsible steel container which was fully described in the original report. Defendants and interveners contend that the specifications which complainant has proposed would permit the use of only the patented article which it manufactures. Complainant denies this, but states that it has no desire to exclude other containers of equal merit, and that it is quite willing that the specifications should be amended in any way that we deem proper. In justification of the rates desired for the return movement, complainant directs atten-

tion to the compactness of its container when knocked down, weighing 70 pounds to the cubic foot, and to the fact that under "Perishable protective tariff No. 1" the carriers return temporary false flooring, racking, lining, block-strapping or bracing, dunnage, or supports for loading and stowing, also stoves, at one-half the fourth-class rates in all territories.

It is claimed for complainant's container that it would reduce loss and damage claims resulting from breakage and theft, and that it would also facilitate the economical loading of cars. These claims were considered in the original report. But these advantages, so far as they may exist, would accrue to the carrier rather than to the shipper, and this is also true of the revenue gained from the return movement. The container may be used repeatedly, and certain other advantages to the shipper are claimed, but apparently they are insufficient to offset the added expense under existing freight tariffs from the heavier weight as compared with the ordinary wooden box or fiber package. Complainant is, therefore, unable to bring its container into extensive use unless it can secure concessions in tariff charges from the carriers. It contends that the concessions which it asks are justified by the benefits which would flow to the carriers from the use of the container.

We have had occasion to comment in other proceedings upon the waste brought about by loss and damage in transit, and the seriousness of this problem is increasing rather than diminishing. Anything that can be done to reduce such loss and damage is manifestly in the interest of carriers and public alike. Concessions in freight charges based upon the manner in which goods are packed or the containers which are used are not unlawful, provided they are reasonably related to the advantages accruing to the carriers from the improved packing or loading. In the present instance, however, the evidence offered to show the character and extent of the advantages which the carriers would derive from the use of complainant's container is largely speculative. This is necessarily so, since there has been little actual experience upon which to predicate more definite information, but it results in a record which offers no adequate foundation for the action upon our part which complainant seeks. Defendants do not concede that the benefits claimed would be realized in practice. It appears, also, that such reduction of loss and damage as might result from the use of the container would differ widely in the case of various commodities. Under the circumstances we are not justified in requiring the carriers to grant the concessions which are sought, or in undertaking to prescribe modified concessions.

In the original report we called attention to ratings in the classifications which applied to certain commodities "in wooden boxes
57 I. C. C.

only," thus excluding the use of complainant's container, and we there suggested that provision be made for the transportation of such commodities in complainant's container as are permitted to be transported in wooden boxes. This has apparently been done save as to millinery, which may still be transported "in wooden boxes only." However, there are certain limitations as to the use of iron or steel containers with respect to the shipment of butter, cheese, eggs, and citrus fruits. Under the consolidated freight classification, wherever boxes are specified in the commodity descriptions they must be made of iron or steel or of wood, or of fiberboard or similar material, subject to certain specifications. The consolidated classification therefore permits the general use of all iron or steel containers, including complainant's.

The defendants assert that they have substantially complied with our suggestions in the former decision; that the limitations as to the shipment of butter, cheese, eggs, and citrus fruits do not discriminate against complainant's container, but prevent the use of all iron or steel containers; and that such limitations are necessary for obvious reasons peculiarly applicable to the transportation of these commodities. The classification does not prohibit the use of an iron or steel container, but it is clear from the packing specifications that only wooden containers are contemplated. However, this record does not warrant our ordering defendants to permit the general use of iron or steel containers for shipping these perishable commodities. Complainant's container is now accorded the same treatment as all other iron or steel containers. The restrictions that formerly applied to shipment in "wooden boxes only" have been removed except as to millinery. This exception should be removed immediately.

Upon the facts of record, we affirm the findings in the original report and dismiss the complaint.

No. 10478.¹
LAKEWOOD ENGINEERING COMPANY
v.
**DIRECTOR GENERAL AND NEW YORK CENTRAL
 RAILROAD COMPANY.**

Submitted February 4, 1920. Decided March 30, 1920.

Carload rates on portable railway track, in sections, from Cleveland, Ohio, to New York, N. Y., including Greenville Piers, N. J., and to Baltimore, Md., for export, found unreasonable to the extent that they exceeded rates contemporaneously applicable on fishplates, switches, turntables, and cross-overs, in carloads.

Clifford Thorne, Ralph Merriam, and Mark A. Copeland for complainant.

S. H. West, D. P. Connell, Morrison Waite, and J. H. Grant for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, Commissioner:

Complainant operates a plant at Cleveland, Ohio, for the manufacture of portable military railway tracks and contractor's and industrial-railway equipment. During the war it furnished approximately 95 per cent of the track for military railways used by the French government and about 50 per cent of the track for those used by the United States. The contract with the French government specified delivery of the equipment to its representative at New York, N. Y., for export. When complainant's shipments of riveted rails and ties began to move, complainant is said to have relied upon the opinion of the then head of the joint inspection bureau at Cleveland to the effect that the connected ties and rails, in carloads, properly took the rates applicable on new rails and ties. A commodity rate of \$2.24 per ton of 2,240 pounds, equivalent to 10 cents per 100 pounds, was then in effect on new iron and steel rails and crossties,

¹ This report also embraces No. 10693, Same v. Director General, Baltimore & Ohio Railroad Company et al.; No. 10693 (Sub-No. 1), Same v. Director General, New York, Chicago & St. Louis Railroad Company et al.; No. 10693 (Sub-No. 2), Same v. Director General, New York, Chicago & St. Louis Railroad Company et al.; No. 10693 (Sub-No. 3), Same v. Director General and Baltimore & Ohio Railroad Company; No. 10693 (Sub-No. 4), Same v. Director General, New York Central Railroad Company et al.; No. 10693 (Sub-No. 5), Same v. Director General, Pennsylvania Company et al.; and No. 10693 (Sub-No. 6), Same v. Director General, Pennsylvania Company et al.

in carloads. Complainant loaded its steel rails and ties, riveted together, without including other accessories of portable railways, which were loaded on separate cars, and are not involved in this proceeding. Over 70 carloads of steel rails and ties so loaded were shipped between the points involved during the year 1915 and charges were collected thereon at the \$2.24 rate.

In 1916 under a second contract with the French government many shipments of connected rails and ties were made to New York for export, and defendants accepted numerous carloads at the 10-cent rate. Thereafter a controversy arose as to the legality of such application, defendants challenging the applicability of the rate inasmuch as, when shipped, the rails and ties were riveted together into small sections. Thereafter defendants refused to accept further shipments at the commodity rate applicable on new iron and steel rails and crossties and insisted upon the application of their published fifth-class rate on portable railway tracks, set up, in sections, which was 22.4 cents per 100 pounds, until July 16, 1917, at which time it was increased to 25.5 cents; and again on June 25, 1918, to 32 cents. Some of the shipments involved in No. 10693 and subcomplaints moved for export through Greenville Piers, N. J., a New York rate point, and others to Baltimore, Md., for export, the latter being charged a fifth-class rate of 22.5 cents. All rates are hereinafter stated in cents per 100 pounds.

By complaints filed February 27, 1919, and later dates, it is alleged that the rates collected were illegal, unreasonable, and unduly prejudicial to the extent that they exceeded those contemporaneously applicable on new iron or steel rails and iron or steel crossties from and to the points involved. Reparation is sought on all shipments made on which the class rates were applied. We are asked to determine the rates legally applicable on the shipments, and to prescribe reasonable and nonprejudicial rates for the future. The respective periods covered by the eight complaints, the rates assessed on the shipments, and the rates constituting the basis claimed for purposes of reparation are set out in the appendix, hereto attached. It is impossible to determine whether the charges on all of the shipments were collected within the statutory period. Our discussion and findings relate only to the shipments as to which complaints were seasonably filed.

The rails used for portable track are first sawed to exact length and the necessary rivet holes punched, after which two pieces of rail with the connecting crossties are placed in position upon moving trucks and carried through riveting machines where rivets are inserted and clinched, thus completing the track section as shipped by complainant.

Complete portable railway tracks also include switches of various sizes and design, turntables, crossovers, fishplates, and bolts, and frequently frogs and switch points instead of complete set-up switches. The sections of track involved in this proceeding were shipped in straight carloads without the inclusion of any of the other articles referred to. These other articles were shipped separately and on separate bills of lading.

Complainant contends that the term "portable track," as used in the trade, contemplates not only the rails and ties, but also the various equipment parts necessary to render the track complete, and that the shipments, as made, were exclusively rails and ties, entitled to the commodity rate, regardless of the fact that they were riveted together into sections of track. Considerable evidence was submitted, including copies of contracts, letters, extracts from catalogues, and testimony of witnesses familiar with the trade to show that rails and ties alone do not constitute portable railway track within the commonly accepted meaning of the term.

The commodity tariff item relied on by complainant is as follows:

NEW IRON AND STEEL RAILS AND IRON AND STEEL RAILROAD
CROSS TIES, for export only, in carloads.

Complainant insists that inasmuch as rails and ties are associated in the above item the commodity rate should apply notwithstanding that complainant's shipments consisted of the two parts riveted together into sections. The use of the conjunctive is accentuated as indicating a definite application of the provision to rails and ties, and not strictly confined to rails or ties, or a mixture of both, not fastened; moreover, it is argued that the item is not so phrased as to exclude the fastening of the rails and ties together.

Conceding for the sake of argument that the rails and ties, fastened together, may be denominated portable railway track, in sections, complainant insists that the article is none the less one consisting of rails and ties, and that in spite of the classification provision the commodity rate was therefore applicable under rule 7 of the Commission's Tariff Circular No. 18-A, which reads as follows:

In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, * * *. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the class rates between the points to which such commodity rate applies.

Prior to the filing of these complaints it appears that the New York Central Railroad Company brought certain actions in the United States district court for the northern district of Ohio, to recover alleged undercharges on certain of the shipments which

moved to New York under the commodity rates. The question before the court was whether complainant's shipments were portable railway tracks, subject to the fifth-class rate, or new iron or steel rails and crossties, entitled to the commodity rate. Judgment was rendered against defendant, complainant here before us, and upon appeal the circuit court of appeals for the sixth circuit sustained the judgment of the lower court. A proceeding in error in those judgments is now pending in the Supreme Court of the United States.

In the decision by the circuit court of appeals, *Lakewood Engineering Co. v. New York Cent. R. Co.*, 259 Fed., 61, it is said:

It is next said that the shipper always has the choice whether to ship an article set up or knocked down, and that named articles do not necessarily lose their identity because they have been fastened together. This is true enough in many cases; the trouble here is that, by being fastened together to the extent and in the manner employed, they at once pass over into a more appropriate classification that is waiting to receive them. These rails and ties ceased to be merely rails and ties; they were the raw materials which had been fabricated into something else.

The freight involved in the court litigation is similar to that here in issue. Moreover the parties are the same. Defendants therefore argue that the court adjudications of the tariff application are binding upon both parties to that litigation before any tribunal in proceedings involving the same question, and that complainant is estopped from claiming before this Commission that the commodity rate was or is legally applicable. In view of our conclusions we are not called upon to determine that question.

Defendants acknowledge that if the rails and ties had not been fastened together the commodity rate would properly have applied, but contend here, as in the court cases, that the joining of the two excluded them from that item. This contention, we think, is sound. A tariff provision of "barrel staves, hoops, and heading" would certainly not apply on barrels. And while this comparison may involve an element of disproportionate bulk to weight, the circuit court's observations are in point that "for purposes of definition and classification, a steam engine does not cease to be such because the governor is omitted, nor would shoes be anything but shoes, if shipped without buttons or laces." Fishplates and bolts may have been essential parts of a section of portable railway track under the terms of complainant's contracts with the French government and indispensable to a section ready for immediate use, yet they are but accessories or appurtenances to the substantial framework of the thing itself. The absence of fishplates and bolts from the rails and ties, riveted together, does not alter the fundamental character of the latter from a transportation or tariff standpoint. Charges so assessed were therefore based on the legal classification ratings and tariff rates.

There remains for consideration the reasonableness of the rates assessed on the sections of portable railway track, as loaded and shipped by complainant. Complainant urges that any rate on its commodity in excess of the rate contemporaneously in effect on rails and ties, not fastened together, was and is unreasonable and unduly prejudicial; that the conditions of transportation are similar; that there is no such difference in value as to justify any considerable difference in rates; and that its material as slightly fabricated should have been and should be accorded virtually the same rates as the articles from which made, especially as complainant's shipments exceeded the minimum weight on rails and ties.

The minimum weight on rails and ties was 20 gross tons, or 44,800 pounds; on portable railway track sections, 36,000 pounds, though practically every carload shipped by complainant exceeded 44,800 pounds. The usual or typical load consisted of 16 sections making a total weight of 46,374 pounds, and the average of all shipments involved was 46,509 pounds. Complainant insists that the transportation of portable track, in sections, is accompanied by no risk of damage and requires no expedited movement or special equipment, such as steel cars or steel underframe cars. The shipments here involved were loaded in ordinary gondola cars or on flat cars. It is stated that the loss and damage claims are negligible in proportion to the revenue received by defendants.

That the fifth-class rates are excessive as applied to portable railway track, in sections, is argued from the fact that such rates generally apply on articles of much greater complexity and value and of less loading density. Complainant's commodity is likened to saw-mill track used largely in many of the western states and on which the same rate applies as is published on steel rails and crossties.

As previously stated, the fishplates and bolts were shipped in separate cars and separately billed; likewise the switches, turntables, crossovers, etc. On the various individual parts, other than the rail sections, commodity rates on certain iron and steel articles were applied which rates will hereinafter be termed the rates on "iron and steel articles." The rates on iron and steel articles were higher than the rates on rails and ties but substantially lower than the fifth-class rates.

Turntables are about three times more valuable than the rail sections, the cost of labor thereon being practically 50 per cent of the value of the material, whereas the labor cost on the rail sections is not over 6 per cent of the value of the material. Switches are more than 100 per cent greater in value than the rail sections. Complainant refers to other fabricated articles which are accorded the same rates as the unfabricated iron or steel product of which

they are made, such as wire fencing, bridge iron, girders, electric light poles, arms and braces, car trucks, and car wheels on axles.

Defendants assert that the rate on steel rails and ties, shipped separately, was and is exceedingly low, and an unremunerative rate if applied to portable railway track sections; that rails and ties load compactly and heavily, readily reaching 10 per cent above the marked capacity of the car used; whereas the portable track sections load comparatively light, averaging 46,509 pounds. Rail shipments from Bessemer, Pa., were shown to have averaged 96,029 pounds per car during the year 1917; 104,406 pounds per car during 1918; and about 109,144 pounds per car during the first four months of 1919. The complainant in this case made some shipments consisting only of steel ties from Cleveland to New York that weighed from 81,875 pounds to 90,972 pounds.

Defendants urge that reparation on these sections of portable track shipped by complainants should not be awarded on a basis of less than fifth class, because as the outcome of *Pollak Steel Co. v. B. & O. R. R. Co.*, 49 I. C. C., 238, hereinafter referred to as the *Pollak Case*, full fifth-class rates became applicable on the iron and steel articles shipped by complainant at lower commodity rates. Defendants urge also that complainant's competitors paid fifth-class rates on portable track sections, and that an award of reparation to complainant on a lower basis would be unfair to its competitors who shipped the track sections on full fifth-class rates, and who can not by reason of the limitation of the statute obtain reparation.

It must be observed, first, that the *Pollak Case* was decided March 22, 1918, after all the shipments here in issue had moved; second, that the *Pollak Case* involved merely a question of relationship, and the order therein required only the removal of the undue prejudice found. This could have been effected by a reduction in rates on iron and steel articles from Chicago, Ill., Cincinnati, Ohio, and other complaining points as well as by raising the rates from the preferred points, Pittsburgh, Pa., and Cleveland, to the full fifth-class basis. Moreover, it should be observed that between the period in 1917 when the complainant's shipments moved and the raising of the rates on miscellaneous iron and steel articles to full fifth-class rates in 1918, in virtue of General Order No. 28 of the Director General and our decision in the *Pollak Case*, various conditions affecting the cost of transportation, had notably changed. We are therefore of opinion that subsequent increases in the rates on miscellaneous iron and steel articles should not deter us from condemning an adjustment which imposed a lower rate on miscellaneous iron and steel articles, many of them more valuable than these sections of portable track, while contemporaneously charging the portable track sections with full fifth-class rates.

From Cleveland to New York over the Baltimore & Ohio is 699 miles; over the Pennsylvania Railroad, 579 miles. To Baltimore the distance is 512 miles over the Baltimore & Ohio and 467 miles over the Pennsylvania. The rates in effect on iron and steel rails to New York during the period of movement and their earnings are shown below:

Route.	Distance.	Rate per gross ton Feb. 2, 1917, to Feb. 23, 1917.	Earnings per ton-mile.	Rate per gross ton Feb. 24, 1917, to Nov. 8, 1917.	Earnings per ton-mile.
	<i>Miles.</i>		<i>Mills.</i>		<i>Mills.</i>
Baltimore & Ohio.....	699	\$2.24	3.2	\$3.16	4.5
Pennsylvania.....	579	2.24	3.8	3.16	5.5

To Baltimore the rate of 12.8 cents per 100 pounds or \$2.86 per gross ton yielded 5.6 mills per ton-mile for 512 miles, and 6.1 mills for 467 miles.

With respect to complainant's contention that the rates attacked should not exceed the rates on rails and ties of 10 cents and 14.1 cents, defendants assert that those rates apply from Cleveland only by virtue of its location intermediate to Lorain, Ohio, from which point the rates were specially published. Defendants' tariffs provide that rates from points named therein shall not be exceeded at intermediate points not named. Cleveland is not named and where intermediate from Lorain to New York or Baltimore the Lorain rate applies. However, over some of defendants' lines Cleveland is not intermediate and would not in those instances be accorded commodity rates on rails and ties even if it were determined that rates on portable track, in sections, should not exceed the contemporaneous rates on rails and ties, as class rates are published on those articles from Cleveland.

Defendants insist that the fifth-class rates, as charged, are reasonable, as well as the fifth-class rating. In the New York-Chicago percentage scheme Cleveland is in what is known as the 71 per cent group, and class rates from Cleveland to New York are constructed on that basis. Complainant does not contend that the fifth-class rates or rating are improper for application on portable railway track in general, as that is a broad term and covers various articles other than rail sections. Its real grievance results from the application of fifth-class rates on rail sections, in carloads.

From February 1, 1917, to February 24, 1917, the export commodity rate on iron and steel articles which was charged on complainant's switches, turntables, fishplates, etc., to New York and Greenville Piers was 14 cents. On the latter date it was canceled, 57 I. C. C.

along with other export rates, following the Commission's decision in *Eastern Export Iron and Steel Case*, 43 I. C. C., 5, and domestic rates on iron and steel articles thereafter applied. From February 24, 1917, to August 20, 1917, the domestic rate on iron and steel articles was 19.9 cents, and on the latter date it was increased to 22.5 cents under authority of *The Fifteen Per Cent Case*, 45 I. C. C., 303. Effective June 25, 1918, the rate was increased to 28 cents under General Order No. 28, and as a result of our decision in the *Pollak Case*, commodity rates on iron and steel articles were canceled and fifth-class rates established from Cleveland to New York and Greenville Piers on the basis of 71 per cent of the New York-Chicago rate, which at present is 32 cents. Shipments to Baltimore were made between July 16, 1917, and November 1, 1917. On iron and steel articles from Cleveland to Baltimore for export a rate of 18.4 cents was in effect until August 20, 1917, when it was increased to 21 cents. On June 25, 1918, under authority of General Order No. 28 it was further increased to 26.5 cents, and on November 1, 1918, the commodity rate on iron and steel articles was canceled and class rates have thereafter applied. The present fifth-class rate from Cleveland to Baltimore is 29 cents.

The lists of special iron and steel articles published at the time the shipments moved embraced many commodities somewhat similar in general character to portable track sections, among them being angle iron, beams, bridge material, castings, columns, wire fencing, girders, steel piling, electric light or railway poles, roofing, roof trusses, shafting, and car underframes.

The extraordinary conditions which gave rise to the exportation of the numerous shipments of portable track no longer exist. Shipments of portable track under normal conditions include track sections, fishplates and bolts, switches, and other appurtenances. The prevailing fifth-class basis is not shown to be improper on such shipments or on track sections without accessorial parts, nor is there warrant on this record for the establishment of export rates for the future.

We find that the present carload rates on portable railway tracks, in sections, with or without accessorial parts, are not unreasonable; but that the rates charged on complainant's carload shipments of portable track, set up in sections, consisting only of rails and ties riveted together, were unreasonable to the extent that they exceeded the rates contemporaneously in effect from and to the points involved on fishplates, switches, turntables, or crossovers, in carloads, to wit, from Cleveland to New York and Greenville Piers, February 2, 1917, to February 23, 1917, inclusive, 14 cents; February 24, 1917, to August 19, 1917, inclusive, 19.9 cents; August 20, 1917, to November

8, 1917, inclusive, 22.5 cents; from Cleveland to Baltimore, July 16, 1917, to August 19, 1917, inclusive, 18.4 cents; August 20, 1917, to November 1, 1917, inclusive, 21 cents.

We further find that complainant made the shipments as described and paid and bore the charges thereon and that it has been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable, and that it is entitled to reparation, with interest, on shipments not barred by the statute of limitations. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

APPENDIX.

The following rates refer to shipments from Cleveland, Ohio, to New York, N. Y., except as otherwise noted.

Com- plaint No. —	Period of shipments.	Rates charged.		Rates sought.	
		In effect.	Amount.	In effect.	Amount.
			<i>Cents.</i>		<i>Cents.</i>
10478 ¹	Feb. 2, 1917, to Nov. 8, 1917.	{ Feb. 2, 1917, to July 15, 1917.	22.4	Feb. 2, 1917, to Feb. 23, 1917.	10.0
		{ July 16, 1917, to Nov. 8, 1917.	22.5	Feb. 24, 1917, to Nov. 8, 1917.	14.1
10693 ²	May 1, 1917, to June 13, 1917.	{ May 1, 1917, to June 13, 1917.	22.4	May 1, 1917, to June 13, 1917.	14.1
10693 ³ — Sub 1.	Apr. 14, 1917, to Nov. 6, 1917.	{ Apr. 14, 1917, to July 15, 1917.	22.4	{ Apr. 14, 1917, to Nov. 6, 1917.	14.1
		{ July 16, 1917, to Nov. 6, 1917.	25.5		
10693 ⁴ — Sub 2.	Sept. 14, 1917, to Sept. 15, 1917.	Sept. 14, 1917, to Sept. 15, 1917.	25.5	Sept. 14, 1917, to Sept. 15, 1917.	14.1
10693 ⁵ — Sub 3.	Aug. 7, 1917, to Nov. 1, 1917.	Aug. 7, 1917, to Nov. 1, 1917.	* 22.5	Aug. 7, 1917, to Nov. 1, 1917.	* 12.8
10693 ⁶ — Sub 4.	July 16, 1917, to Sept. 21, 1917.	{ July 16, 1917, to Sept. 21, 1917.	* 25.5	July 16, 1917, to Sept. 21, 1917.	* 14.1
		{ July 16, 1917, to Sept. 21, 1917.	* 22.5	July 16, 1917, to Sept. 21, 1917.	* 12.8
10693 ⁷ — Sub 5.	Sept. 6, 1917, to Sept. 26, 1917.	Sept. 6, 1917, to Sept. 26, 1917.	25.5	Sept. 6, 1917, to Sept. 26, 1917.	14.1
10693 ⁸ — Sub 6.	July 21, 1917, to Aug. 27, 1917.	July 21, 1917, to Aug. 27, 1917.	* 22.5	July 21, 1917, to Aug. 27, 1917.	* 12.8

¹ Route: New York Central Railroad.

² Route: Baltimore & Ohio Railroad and Lehigh Valley Railroad.

³ Route: New York, Chicago & St. Louis Railroad and Lehigh Valley Railroad.

⁴ Route: New York, Chicago & St. Louis Railroad and Delaware, Lackawanna & Western Railroad.

⁵ Route: Baltimore & Ohio Railroad.

⁶ Rate from Cleveland, Ohio, to Baltimore, Md.

⁷ Route: New York Central Railroad and Pennsylvania Railroad.

⁸ New York rate applies to Greenville Piers.

⁹ Route: Pennsylvania Company, Pennsylvania Railroad, Lehigh Valley Railway, and Pennsylvania Railroad, Western Lines.

¹⁰ Route: Pennsylvania Company, Pennsylvania Railroad, and Pennsylvania Railroad, Western Lines.

No. 10801.

ILLINOIS BRICK COMPANY

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted February 26, 1920. Decided April 1, 1920.

Rates on common brick, in carloads, from points in the Chicago, Ill., switching district, and from Shermerville, Ill., to grouped points in eastern Iowa on the lines of the Illinois Central Railroad and the Chicago, Milwaukee & St. Paul Railway, not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial; but in certain instances found to violate the long-and-short-haul provision of section 4 of the interstate commerce act. Complaint dismissed.

Edward G. Felsenthal for complainant.

J. N. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

Complainant is a corporation engaged in the manufacture and sale of common brick at points in the Chicago, Ill., switching district, and at Shermerville, Ill., a local point on the Chicago, Milwaukee & St. Paul Railway 20 miles north of Chicago. By complaint filed July 28, 1919, the commodity rates in effect since February 1, 1917, on common brick, in carloads, from Chicago and Shermerville to certain grouped points in eastern Iowa on the lines of defendants, Illinois Central Railroad and Chicago, Milwaukee & St. Paul Railway, the latter hereinafter termed the Milwaukee, are assailed as unjust and unreasonable, unjustly discriminatory, unduly prejudicial, and in certain instances in violation of the long-and-short-haul clause of section 4 of the act to regulate commerce. The prayer is for reasonable rates for the future and reparation on certain shipments from Dolton, Ill., a point within the Chicago switching district, and from Shermerville, which moved between February 10 and August 15, 1917, inclusive, to specified points within the Iowa groups. Informal complaints covering these shipments were seasonably filed. Rates are stated herein in cents per 100 pounds, and where not otherwise noted are those which were in effect prior to June 25, 1918, on which date the Director General of

Railroads by General Order No. 28 made effective a flat increase of 2 cents per 100 pounds in all commodity rates on brick, except enameled or glazed. The former and present rates follow:

From Chicago to Illinois Central points in Iowa.	Effective—		From Chicago and Shermerville to Milwaukee points in Iowa.	Effective—	
	Feb. 1, 1917.	June 25, 1918.		Feb. 1, 1917.	June 25, 1918.
Masonville to Waterloo.....	9	11	Beulah to Mason City.....	10	12
Janesville to Staceyville.....	10	12	Greeley to Waucoma.....	9	11
Benson to Ackley.....	9	11	Covington to Pickering.....	9	11
			Ferguson to Woodward.....	9	11
			Millville to West Union.....	9	11

Excepting Ferguson to Woodward, inclusive, all of the destination points are located on or east of the line of the Minneapolis & St. Louis Railroad extending south from St. Paul to Oskaloosa, Iowa, and thence east to Peoria, Ill. The Milwaukee connects with this line at Pickering and Mason City, Iowa, and Albert Lea, Minn.; and the Illinois Central at Ackley, Iowa, and Albert Lea. Effective February 1, 1917, in supplements to Boyd's Western Trunk Line tariffs, I. C. C. Nos. A-684 and A-704, a rate of 8 cents was made applicable by the western trunk lines on common brick, in carloads, from Chicago to Minneapolis and St. Paul, Minn., and points in the St. Paul group, and to certain grouped points in southern Minnesota and eastern Iowa on the lines of the Minneapolis & St. Louis, the Chicago & North Western, and the Chicago, Rock Island & Pacific railways. This rate was increased to 10 cents on June 25, 1918. Both defendant carriers are parties to these joint tariffs, and as there are no routing restrictions it was and is possible to route shipments originating on the lines of either in the Chicago switching district, or on the line of the Milwaukee at Shermerville, to certain points in Iowa and Minnesota served by the Minneapolis & St. Louis at lower rates for longer distances than the rates applicable to intermediate or less distant points on defendants' own lines in the Iowa groups outlined above. To illustrate: A shipment from Chicago to Mason City could be routed by way of the Milwaukee to Pickering and the Minneapolis & St. Louis beyond. If so routed, it would move at a rate 2 cents lower than if moved direct via the Milwaukee to destination. The distance by the former route is 391.4 miles, while by the latter it is 356 miles. Again, a shipment from Chicago to Manchester, Minn., a local point on the Minneapolis & St. Louis north of Albert Lea, could move over the lines of either of the defendants, and, according to the junction point named, whether Pickering, Ackley, Mason City, or Albert Lea, the rates to the intermediate points in the Illinois Central and the Milwaukee groups,

Beulah to Mason City, inclusive, and Covington to Pickering, inclusive, would exceed the rate to Manchester. This and similar violations of the long-and-short-haul rule were not and are not protected by fourth section applications and therefore were and are unlawful. They should be eliminated promptly. No evidence was submitted of any movements of the character above indicated.

This maladjustment grew out of the reduction from 10 to 8 cents made by the western trunk lines in their joint tariffs on October 3, 1916, in the paving-brick rate from Galesburg, Ill., to Minneapolis and St. Paul. Shortly afterwards this 8-cent rate was made applicable from Chicago, Streator, and Abingdon, Ill., to Minneapolis and St. Paul, and to the grouped points in Minnesota and Iowa previously indicated, followed by the inclusion on February 1, 1917, of common brick in the items carrying this rate. Prior to October 3, 1916, the rates from the Illinois points on both paving brick and common brick to these Minnesota and Iowa points were generally 9 and 10 cents. It was testified that the Milwaukee, believing the 8-cent rate too low, did not intend to concur in its publication, but that by tariff error the note whereby it should have been excepted from the items carrying this rate was omitted, thus making the Milwaukee a participant in lower rates to points on the lines of its connections than those carried in its individual brick tariff to the same points or to intermediate points on its own line.

The following table, compiled from defendants' exhibits, discloses that the rates paid by complainant were as low as, or lower than, the rates contemporaneously in effect on the same traffic between points for comparable distances in the same general territory:

From—	To—	Miles.	Rate.	Ton-mile earnings.
			<i>Cents.</i>	<i>Mills.</i>
Shermerville.....	Atkins, Iowa.....	252.3	9	7.1
Dolton.....	Jesup, Iowa.....	261	9	6.9
Shermerville.....	Van Horn, Iowa.....	264.1	9	6.8
Dolton.....	do.....	290.1	9	6.6
Do.....	Waterloo, Iowa.....	276	9	6.5
Do.....	Charles City, Iowa.....	343.6	10	5.8
Decatur, Ill.....	Paducah, Ky.....	229	8.3	7.2
Chicago, Ill.....	Ellis Junction, Wis.....	248	10	8.0
Menomonee, Wis.....	Watson, Minn.....	255	9.2	7.1
St. Paul, Minn.....	Bristol, S. Dak.....	256	10	7.8
Mason City, Iowa.....	Mitchell, S. Dak.....	258	11.5	8.9
Chicago, Ill.....	Wausaukee, Wis.....	258	10	7.7
Milwaukee, Wis.....	Bassett, Iowa.....	261	9	6.8
Mason City, Iowa.....	Pukwana, S. Dak.....	316	13	8.2
St. Paul, Minn.....	Craven, S. Dak.....	317.7	12	7.5

The record is devoid of evidence of competition, or of damage to complainant by reason of the higher rates maintained to the points to which it shipped than to farther distant points.

EASTMAN, Commissioner:

The foregoing is in substance the statement of facts in the examiner's proposed report which was served upon the parties. After stating that the circumstance that certain of the rates assailed were in violation of the fourth section of the act does not, without proof of damage, entitle the complainant to an award of reparation, *Oregon Fruit Co. v. S. P. Co.*, 50 I. C. C., 719; *Iten Biscuit Co. v. C., B. & Q. R. R. Co.*, 50 I. C. C., 724, 53 I. C. C., 729, the examiner recommended that we find that the rates assailed are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. In its exceptions complainant calls attention to the evidence that defendant carriers had made application to the Director General for the institution of the rates requested herein. As explained of record, this application, which covered a wider territory than is here involved, was made, not because defendants considered the rates assailed too high, but to equalize their rates with those applicable via other lines. Complainant also questions the comparative rates cited by the examiner, claiming that they are rates upon which common brick actually moves, and seeks a reopening of the case for the submission of further comparisons. But in view of the comparatively low ton-mile earnings from the traffic in question for the relatively short distances over which it moves, we are not persuaded that further comparisons would be of value. The opportunity to present them may be sought, if complainant desires, upon an application for rehearing. The record as made justifies the finding recommended by the examiner and we adopt it as our own. This finding, however, is without prejudice to any different conclusion that may be reached in No. 10733, *National Paving Brick Mfrs. Asso. v. Director General*, now pending, in which the rates on common and other kinds of brick applicable throughout the country are under attack.

An order dismissing the complaint will be entered.

57 I. C. C.

No. 10609.

F. R. WOODBURY LUMBER COMPANY ET AL.

v.

DIRECTOR GENERAL AND GREAT NORTHERN
RAILWAY COMPANY.

Submitted November 13, 1919. Decided March 30, 1920.

Carload of lime from Evans, Wash., to Okanogan, Wash., delivered to defendant unrouted, and transported by way of Canada although lower rate applied over an available intrastate route, found to have been misrouted. Reparation awarded.

J. B. Campbell and *R. S. Brown* for complainants.

John F. Finerty and *Thomas Balmer* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

Complainants are the F. R. Woodbury Lumber Company and Idaho Lime Company, corporations engaged in the lumber and lime business respectively, at Spokane, Wash. By complaint seasonably filed, as amended, they allege that a carload of lime shipped November 22, 1917, from Evans, Wash., to Okanogan, Wash., was misrouted and that the charges assessed were unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation and to establish a reasonable rate for the future. Rates hereinafter stated are in cents per 100 pounds.

The Great Northern Railway, hereinafter termed defendant, has two routes between Evans and Okanogan. One is by way of Oroville, Wash., and passes for a short distance through Canada. The other lies wholly within the state of Washington, by way of Spokane, Wilson Creek, and Wenatchee, Wash. The distance over the route through Canada is 173.5 miles, while over the intrastate route it is 371.5 miles. The shipment, weighing 31,000 pounds, was delivered to the defendant at Evans unrouted and was forwarded by defendant to Okanogan over the Canadian route above mentioned. Transportation charges, exclusive of war tax, were collected in the sum of \$124, based on the class C distance rate of 40 cents applicable under the governing western classification. The rate contemporaneously in effect over the intrastate route was the class E

distance rate of 23 cents, prescribed by the Public Service Commission of Washington, on file with this Commission. Complainant asks reparation on the basis of the 23-cent rate.

For the defendant it was testified that it has been its practice to forward all unrouted shipments such as that in question over the route through Canada, as this route is much shorter and has less congestion of traffic and fewer terminals than the intrastate route. It is also stated that the shipment in question moved to destination in approximately 48 hours, whereas, had it moved intrastate it would have required from 68 to 94 hours according to connections made. For these reasons it is urged that the intrastate route is unreasonable. The defendant carrier's witness stated, however, that the cost of operation was about three times as much mile for mile over the Canadian route as over the intrastate route, due chiefly to "light traffic, light rail, fear of bridges, so we can only use light power," and that probably nowhere in the state of Washington are higher rates maintained than over the route of movement.

In view of all the facts of record, we find that the intrastate route between Evans and Okanogan is not an unreasonable one as compared with the Canadian route.

Following *Northern Pacific Ry. Co. v. Solum*, 247 U. S., 477, the reasonableness of a particular routing of traffic as between two routes, one interstate and one intrastate, is an administrative question whose determination is within our jurisdiction. In the case cited the Supreme Court says:

In the absence of shipping instructions it is ordinarily the duty of the carrier to ship by the cheaper route. But the duty is not an absolute one. The obligation of the carrier is to deal justly with the shipper, not to consider only his interests and to disregard wholly its own and those of the general public. If, all things considered, it would be unreasonable to ship by the cheaper route, the carrier is not compelled to do so. The duty is upon the carrier to select the cheaper route only "if other conditions are reasonably equal." Resort to the more expensive route may be justified. And the justification may rest either upon the peculiar circumstances of a particular case or upon a general practice.

While the defendant does not question our jurisdiction to determine the fact of misrouting in a case such as the one before us it insists that we are without power to award reparation should we find that the shipment was misrouted, as the route over which the lower rate applied was intrastate. With this contention we can not agree. Finding as we do here, that the shipment was misrouted, inasmuch as in the absence of routing instructions it was sent over a route admittedly more costly while another less costly and lower-rated route was open, there is a violation of section 1 of the act, in that a practice was followed which we find unreasonable. For such

violation of the act the defendant is liable under section 8 for the full amount of the damages sustained in consequence. The damage here is measured by the difference between the rate paid and the rate legally applicable by the state route. We do not pass upon the reasonableness of the state rate applicable, but fix the damages as the difference between the rate paid and the rate legally applicable by the state route.

We find that the Great Northern Railway Company misrouted the shipment; that complainant F. R. Woodbury Lumber Company paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the transportation charges paid and those which would have accrued if the shipment had moved over the intrastate route described; and that it is entitled to reparation from the Great Northern Railway Company in the sum of \$52.70, with interest. We are without power to order refund of war taxes. The foregoing finding makes it unnecessary to consider the other grounds of complaint. An appropriate order will be entered.

57 I. C. C.

No. 10607.¹

GAMBLE-ROBINSON-LEWISTOWN COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted February 16, 1920. Decided March 30, 1920.

Rates on lemons, in carloads, from certain points in California to Lewistown, Miles City, and Glendive, Mont., found to have been unreasonable. Reparation awarded.

L. A. Knudsen for complainants.

B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, Chairman:

Complainants are corporations engaged in the fruit and vegetable business at Lewistown, Miles City, and Glendive, Mont. By complaints filed April 26, 1919, they ask reparation, alleging that unreasonable rates were assessed on 14 carloads of lemons shipped from Corona, Whittier, Whittier Groves, Santa Paula, La Manda Park, Blanchards, and Arlington, Calif., to the Montana points above mentioned. It is also alleged in Sub-No. 1 that the present rate from Whittier Groves to Glendive is unreasonable and unduly prejudicial. The claims were presented informally within the statutory period. Rates are stated in amounts per 100 pounds.

The shipments moved from March 20, 1916, to July 23, 1917. Three from Whittier Groves originated on the Pacific Electric Railway, a carrier not under federal control, and the remainder originated on the lines of various steam carriers. One shipment from Whittier Groves was originally consigned to Butte, Mont., and was reconsigned to Glendive under proper tariff provision. The shipments moved over defendants' lines, and charges were assessed at the applicable rate of \$1.15. Reparation is asked to basis of a rate of \$1. Complainants rely on *Gamble-Robinson Fruit Co. v. S. P. Co.*, 45 I. C. C., 578, in which we condemned a rate of \$1.15 on

¹ This report embraces No. 10607 (Sub-No. 1), *Gamble-Robinson Fruit & Produce Company v. Director General, Los Angeles & Salt Lake Railroad Company, et al.*

lemons, in carloads, from Tustin, Santa Barbara, Whittier, and Santa Paula, Calif., to Miles City and awarded reparation to basis of a rate of \$1; and *Arlington Heights Fruit Exchange v. S. P. Co.*, 19 I. C. C., 148, and 22 I. C. C., 149, therein cited. Following *Gamble-Robinson Fruit Co. v. S. P. Co.*, *supra*, and after the movement of these shipments the carriers reduced the \$1.15 rate to \$1, except the rate from Whittier Groves to Glendive, which was not changed. No reason for this exception was given. On June 25, 1918, the rates in question were increased to \$1.44 from Whittier Groves to Glendive and \$1.25 from and to the other points, and these are the present rates. Although the complainants were not parties to the transportation records covering most of the shipments, they paid and bore the freight charges, and apparently are the real parties in interest. Defendants offered no evidence. A proposed report by the examiner, finding that the rates were unreasonable and that reparation should be awarded, was served upon the parties. No exceptions thereto were filed.

We find that the rates assailed were unreasonable to the extent that they exceeded \$1; that complainants made the shipments and paid and bore the charges thereon; that they were damaged to the extent of the difference between the charges paid and those which would have accrued at the rate found reasonable; and that they are entitled to reparation, with interest. They should prepare and present a statement in accordance with rule V of the Rules of Practice showing the amount of reparation due under these findings.

The Pacific Electric Railway is not a party to the complaint filed in Sub-No. 1, which attacks the rate charged, and the present rate, from Whittier Groves to Glendive. Therefore, although no reason for a rate from Whittier Groves higher than from the other points was presented, no order for the future can be entered against that carrier. However, it may join in the payment of reparation on the shipment involved in Sub-No. 1, and a change in the rate from Whittier Groves to these destinations that will bring it into harmony with the rates from neighboring points is hereby approved.

57 I. C. C.

No. 10682.

D. M. BARE PAPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHESAPEAKE & OHIO
RAILWAY COMPANY, ET AL.

Submitted October 31, 1919. Decided March 20, 1920.

Rates on pulp wood, in carloads, from points in Virginia to Roaring Spring, Pa., found to have been unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from the same points to Williamsburg, Pa. Reparation awarded.

Walter M. Lorenz for complainant.

J. S. Patterson and *W. S. Bronson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner was served upon the parties to which exceptions were filed by complainant and defendants. The following is the report of the examiner with such modifications as appeared necessary upon consideration of the record and exceptions.

The complainant, a corporation engaged in the manufacture of paper at Roaring Spring, Pa., alleges that the rates assessed on 84 carload shipments of pulp wood from Beaver Dam, Hewlett, Verdon, Tyler, and Arvonnia, Va., to Roaring Spring made during the period from October, 1918, to January 30, 1919, were unreasonable and unduly prejudicial in violation of the act to regulate commerce by the amount the said rates exceeded the rates contemporaneously in effect on like traffic from these points of origin to Williamsburg and Tyrone, Pa. Reparation only is prayed, including an alleged excess war tax.

The points of origin are local stations on the Chesapeake & Ohio Railway. Tyrone is on the main line of the Pennsylvania Railroad between Harrisburg and Pittsburgh, Pa. Williamsburg and Roaring Spring are on branch lines of the Pennsylvania in the vicinity of Tyrone, the latter point and Williamsburg being 23 miles and 27 miles, respectively, nearer to the points of origin than is Roaring Spring.

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Lumber rates were legally applicable to the shipments, which moved over defendant carriers' lines, pulp wood being included in the list of articles taking those rates. Apparently there are outstanding undercharges on some of the shipments. The lumber rates to Roaring Spring and the pulp wood commodity rates, in effect prior to January 30, 1919, from the same points of origin to Williamsburg and Tyrone are set forth in the following table. Rates will be stated in cents per 100 pounds, carloads.

From—	To Roaring Spring: Lumber.	To Williams- burg and Tyrone: Pulp wood.
Beaver Dam.....	25.5	19
Hewlett.....	25.5	18.5
Verdon.....	25.5	18.5
Tyler.....	25.5	19
Arvonla.....	26.5	19.5

The lumber rates to Williamsburg were the same as to Roaring Spring, while to Tyrone they were 24 cents from Arvonla and 21.5 cents from the other points of origin. Williamsburg also takes the same class rates, inbound and outbound, as Roaring Spring. On January 30, 1919, the defendants established the same rates on pulp wood to Roaring Spring as applied to Williamsburg and Tyrone. These rates are still in effect.

The complainant shows that the ton-mile earnings under the lumber rates assessed for the distances to Roaring Spring, 405 to 418 miles, range from 11.9 to 13 mills, whereas to Williamsburg and Tyrone on pulp wood they range from 9.3 to 10.2 mills.

The complainant also shows a number of commodity rates on pulp wood applying to other destinations from the same as well as from other points of origin which are less than the contemporaneous lumber rates. The ton-mile earnings under such rates range from 7.96 to 9.79 mills for distances of from 258 to 364 miles. It cites *Wisconsin Pulp Wood Co. v. G. N. Ry. Co.*, 22 I. C. C., 594, in which we said that such a low grade of traffic as pulp wood should ordinarily take a lower rate than lumber.

The defendants admit that the rates assailed were unduly prejudicial. They insist, however, that these rates were not unreasonable. They show that in official classification territory lumber, including pulp wood, is classified sixth class, and state that there was a substantial movement of lumber in trunk line territory at the sixth-class rates. The lumber rates assessed, it was shown, were less than the corresponding sixth-class rates. This was said to have resulted from our findings in *The Fifteen Per Cent Case*, 45 I. C. C., 303, wherein

the class rates were permitted to be increased by a certain percentage while a specific increase of 1 cent was permitted in the lumber rates and further because under General Order No. 28 of the Director General of Railroads the class rates were again increased 25 per cent while the lumber rates were advanced a maximum of 5 cents. By these increases the sixth-class rates from all the points except Arvonnia had become 27.5 cents and from Arvonnia 30 cents as compared with the lumber rates of 25.5 and 26.5 cents. It was further stated that the pulp-wood rates to Williamsburg and Tyrone had their origin in the combination of low commodity rates to and beyond Doswell, Va., the factor up to that point being a state-made rate, and that beyond a special rate, published by the Richmond, Fredericksburg & Potomac Railroad, which was lower than either the sixth-class or the lumber rates; that while the same rates were established to Roaring Spring on January 30, 1919, as applied to Williamsburg and Tyrone, regardless of the branch-line situation, a differential relationship would have been warranted.

It appears that as to 57 of the 84 cars the purchase price was based on a freight rate of 19 cents under an agreement with the consignors that one-half of any excess in freight charges over and above such rate would be borne by the consignors. The freight charges were paid and borne by the complainant, except as to the 57 cars mentioned, on which one-half of the excess was charged back to the consignors. The complainant introduced in evidence assignments from the consignors of their claims for reparation.

We find that the rates assailed were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously applicable on pulp wood, in carloads, from the points of origin named to Williamsburg, Pa. We further find that the shipments were made and the freight charges thereon paid and borne as described; and that the complainant was damaged thereby and is entitled to reparation, with interest, represented by the difference between the amount paid and the amount which would have accrued at the rates herein found reasonable. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement in accordance with rule V of the Rules of Practice and submit it to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

We are without power to order refund of the excess war tax.

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No. 10597.

CALUMET & ARIZONA MINING COMPANY ET AL.

v.

DIRECTOR GENERAL.

Submitted February 7, 1920. Decided March 30, 1920.

Rates in effect during federal control on copper ore, in carloads, from Bisbee, Ariz., to Douglas, Ariz., and on lime rock, in carloads, from Forrest, Ariz., to Douglas, found not unreasonable or otherwise unlawful. Complaint dismissed.

*John S. Burchmore and Luther M. Walter for complainants.
R. V. Fletcher and W. M. Peticolos for defendant.*

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Commissioner*:

This case was made the subject of a proposed report prepared by the examiner and served upon the parties. Exceptions were filed and argument has been had thereon.

Complainants, the Calumet & Arizona Mining Company and the Phelps Dodge Corporation, are engaged in operating copper mines at Bisbee, Ariz., and smelters at Douglas, Ariz. By complaint, filed April 26, 1919, the rates over the El Paso & Southwestern Railroad, hereinafter referred to as the Southwestern, on copper ore, in carloads, from Bisbee to Douglas, and on lime rock, in carloads, from Forrest, Ariz., to Douglas, are assailed as unreasonable and unduly prejudicial in violation of sections 1 and 3 of the act to regulate commerce and of section 10 of the federal control act. Reasonable rates for the future and reparation are asked. Unless otherwise specified, rates are stated herein in amounts per net ton.

On June 25, 1918, pursuant to General Order No. 28 of the Director General of Railroads, and by application of the rule for the disposition of fractions contained in that order, the rate on copper ore from Bisbee to Douglas, which, since February 1, 1908, had been 20 cents and for some years prior to the latter date had been 20 cents per long ton, was increased to 30 cents, an increase of 50 per cent, and the 25-cent rate on lime rock from Forrest to Douglas was increased to 50 cents, an increase of 100 per cent. Complainants protested against the amount of these increases, and the Arizona

subcommittee of the division of traffic of the Railroad Administration recommended a reduction in the copper-ore rate to 25 cents. This recommendation was denied. As the rates in issue, although applicable only on intrastate traffic, were initiated by the Director General, the duty of determining their justness and reasonableness is upon us. Our findings, however, are limited to the period of federal control.

Douglas is on the main line of the Southwestern's western division. Bisbee station is the terminus of a branch line which connects with the main line at Osborn, Ariz., a point 9 miles south of Bisbee station and 22 miles west of Douglas. Within the Bisbee district there are two other small stations, Warren and Lowell, and a yard at Don Luis 3.5 miles south of Bisbee station. Some 10 shafts are in operation in the Bisbee district. Formerly ore was loaded from all of the shafts operated by complainants, but in the interest of economical mining operations this has been obviated to a considerable extent by underground movement to complainants' Sacramento and Junction shafts where the cars are automatically loaded by means of a belt conveyor and at which shafts from 80 to 90 per cent of the copper ore produced by complainants is said to be loaded. In 1918 the ore loaded at these shafts constituted about 70 per cent of the ore transported to Douglas, including that loaded at other shafts in the Bisbee district. The Sacramento and Junction shafts are adjacent to Lowell and about 2 miles from the Don Luis yard, making the haul to Douglas on the bulk of the traffic approximately 30 miles. The empty cars are brought from the smelters to Osborn in train loads of 70 cars. On account of ascending grades of from 2 to 2.5 per cent, one-half of the cars are left at Osborn to be brought up by switch engines to Lowell. The remainder are carried on to the Don Luis yard. Four to seven switch engines are operated on the Bisbee branch according to the amount of the traffic. From the Don Luis yard 20 cars at a time are switched over to Lowell, from which point the cars are distributed to the loading chutes. From Lowell to the Sacramento shaft the switch engines can handle only 10 cars. As stated, ore is also loaded at other shafts in the Bisbee district, although not all of them operate continuously. At the time of the hearing there were three different places where the loading of ore necessitated the movement of the empty cars from Lowell through Bisbee station and the return movement of the loaded cars to Lowell. There is a heavy grade between Lowell and Bisbee station, the elevation at the latter point being 5,300 feet as compared with an elevation of 5,165 feet at Lowell and 3,966 feet at Douglas. The loaded cars are assembled at the Lowell yard and those intended for movement by the ore train are taken back to Don Luis in train

lots of 25 to 30 cars, while the excess cars, which defendant places at 50 per cent of the normal movement, are then switched direct from Lowell to Osborn where they are picked up by through trains. As the grade is in favor of the loaded movement, the ore train takes out from Don Luis an average of 70 cars for movement to the smelter. While not directly so stated, it appears that the ore train leaves Don Luis in the afternoon with the loaded cars and returns the following morning with the empties. Upon reaching the smelter of the Calumet & Arizona Mining Company the cars for that plant are placed on a siding and the remaining cars are taken on to the smelter of the Phelps Dodge Corporation. The latter company performs its own spotting service with electric locomotives which return the empties to the sidings adjacent to the Southwestern's main line. For the former company a switch engine performs the service of hauling the cars onto trestles where the contents are dumped into the ore pits and the empties returned to the siding. The cars used in this service are specially constructed, side-dump, steel cars containing four compartments and having a steel rail running through the center to receive the weight of the load. The capacity of these cars is in excess of 100,000 pounds.

The ore produced in the Bisbee district is of low grade, yielding from 2 to 6 or 7 per cent, or an average of from 85 to 90 pounds of copper bullion to the ton, the remainder being waste. At the time of the hearing the value of the bullion was placed at 15 cents per pound f. o. b. New York. Prior to the armistice the value was considerably higher. During the year 1918, according to an exhibit filed by complainants, the Phelps Dodge Corporation received from the Bisbee district 16,481 cars containing 881,361.43 tons, an average of 53.48 tons per car, and during the same period the Calumet & Arizona smelter received 743,422 tons. Based on the above average loading, the value of the bullion content of a carload of ore at 15 cents per pound is about \$700, and the per car earnings under the 30-cent rate are \$16.05.

Complainants contend that the rate on copper ore should not exceed 25 cents, which would result from a straight increase of 25 per cent in the rate formerly in effect. They urge that the automatic loading and unloading of the cars and the solid-train movements of the shipments requiring no classification of the cars permit the Southwestern to obtain the maximum use of its equipment, and that there are no loss or damage claims arising out of this traffic.

An endeavor was made by complainants to determine the actual cost of this service and they introduced an exhibit which, omitting details, places the cost for the movement per car from Bisbee to Douglas and return at \$9.06. Defendant also submitted evidence

in this connection consisting of an inexact approximation of the general cost of switching at Bisbee and Douglas. The evidence as to costs in this record is generally unsatisfactory and is of little value in determining the issues presented. It is apparent, however, that the handling of this traffic at Bisbee is unusually involved and expensive. The switching charge on carload traffic between industries at Bisbee is \$6.50 per car.

As further evidence of the unreasonableness of the rate on ore, complainants cite intrastate rates which they state are now in effect on copper ore, as follows: From Ray, Ariz., to Hayden, Ariz., 25 cents, yielding about 11 mills per ton-mile for a two-line haul of 23 miles including a switching movement of 2.5 miles to effect delivery; from Butte, Mont., to Anaconda, Mont., 15 cents, yielding 4.5 mills per ton-mile for a 33-mile haul; and from Santa Rita, N. Mex., to Hurley, N. Mex., 12.5 cents, yielding 14 mills per ton-mile for 9 miles. The lines publishing the rates cited from Ray and Butte are said to be owned or controlled by mining companies which furnish a large percentage of their traffic. With the exception of the rate from Butte to Anaconda, which is obviously low, these comparisons do not indicate that the rate assailed, which yields 10 mills per ton-mile, is excessive, especially when the empty return movement upgrade and the nature and extent of the switching service at Bisbee are taken into consideration. Defendant cites intrastate rates on ore between points in the state of Colorado ranging from 30 cents for a haul of 2 miles to \$1.80 for a haul of 25 miles. These rates are said by complainants to apply to the movement of lead and silver ores over narrow-gauge lines, which impairs their value as comparisons. Defendant also cites rates on ore of 30 cents for distances of 8 and 10 miles between points in Arizona and of 50 cents and 60 cents for distances of 20 and 27 miles, respectively, between points in Utah.

In the operation of their smelters complainants use considerable lime rock for fluxing purposes. This rock is obtained at a point called Paul's spur but the shipments are billed from Forrest, a point on the Southwestern's main line 10.2 miles west of Douglas and intermediate to Bisbee. The distance from Forrest to the end of the spur is about 3,500 feet. This traffic is handled by the Southwestern's regular trains, eastbound trains picking up the loaded cars on the spur and setting them off at the smelter sidings, and westbound trains picking up the empties and returning them to the spur for loading. The movement in 1918 for both complainants was about 10 to 12 cars per day. At the present time it is about half that volume.

Complainants contend that the present rate of 50 cents is excessive and that based upon distance it should not be over 75 per cent of the copper-ore rate from Bisbee. They assert that a rate of 30 cents

would represent the maximum increase reasonably permissible in the former rate. Defendant contends that the 50-cent rate is not unreasonable when compared with other rates on this commodity for like distances, and in support thereof submitted an exhibit showing rates on lime rock between stations on the lines of other carriers in the states of Arizona, Colorado, Kansas, Nebraska, and Oregon for distances from 1 to 28 miles, the rates ranging from 40 cents to \$1.20; also a tabulation of intrastate distance rates applicable between points in the states of Texas, Kansas, and Missouri ranging from 50 cents to \$1.10 for distances up to 20 miles. The same tariff naming the 15-cent rate on ore from Butte to Anaconda, cited by complainants, carries a rate of 55 cents on lime rock from Anaconda to Butte.

While the rates assailed represent increases of more than 25 per cent over the rates in effect prior to June 25, 1918, these increases were made pursuant to the provisions of General Order No. 28 of the Director General. The percentage of increase is not controlling if the resulting rates are not unreasonable. It may also be observed that these rates were not the only rates increased more than 25 per cent as a result of that general order. Low-grade commodities, such as coal and coke, moving for short distances were subjected to rate increases of more than that percentage and increases ranging from 80 to 100 per cent were made in the rates on various commodities, including sugar and grain, moving for substantial distances.

Complainants lay some stress upon the fact that the Southwestern's earnings for the year 1918 exceeded its standard return. The annual report of the Southwestern's federal auditor to this Commission for the year 1918 shows that that carrier earned 132.3 per cent of its standard return and that its ratio of operating expenses to operating revenues was but 58.34 per cent. The earnings for the year 1918 reflect the increased volume of traffic, particularly of copper ore and bullion, which resulted from war-time activities and the proper measure of the rates assailed should not be determined solely with respect to the unusual conditions which obtained during that period. For the year 1919 the Southwestern earned only 72.7 per cent of its standard return and its ratio of operating expenses to operating revenues increased to over 69 per cent.

We find that the rates assailed were not unreasonable or otherwise unlawful during the period of federal control and an order dismissing the complaint will be entered.

No. 8467.¹

CITY OF SPRINGFIELD, TENN., ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted April 15, 1916. Decided April 12, 1920.

No opinion expressed as to reasonableness of certain class and commodity rates to Springfield, Tenn., from various points of origin in effect prior to federal control. Fourth section departures complained of have been passed upon in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648.

Robert L. Peck, Perkins Baxter, and O. P. Anderson for complainants.

William A. Northcutt and William Fitzgerald for defendants.

T. M. Henderson for Traffic Bureau of Nashville, intervener.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

This complaint, filed November 19, 1915, by the city of Springfield, Tenn., as a municipal corporation, and certain merchants of that place, attacks as unreasonable, under section 1 of the interstate commerce act, unduly prejudicial to Springfield, and unduly preferential of Nashville, Tenn., under section 3, and improperly related to the rates to Nashville under section 4, certain class and commodity rates to Springfield from the following points of origin: Boston, Mass., New York, N. Y., Chicago, and Peoria, Ill., St. Louis, Mo., Evansville, Ind., Cincinnati, Ohio, Louisville, Ky., Grand Rapids, Detroit, St. Clair, and Port Huron, Mich., Seattle, Wash., Los Angeles and San Francisco, Calif. The complainants seek the establishment of just and reasonable and properly related rates for the future, but do not ask for reparation. The Traffic Bureau of Nashville, Tenn., was permitted to intervene, but it introduced no evidence.

Springfield is situated on the Henderson division of the Louisville & Nashville Railroad, 128 miles south of Evansville and 30 miles north of Nashville. It is intermediate to Nashville over the direct route from St. Louis, Evansville, and other points to the

¹ This report also embraces a portion of Fourth Section Application No. 1952

west and north, and is also intermediate to Nashville on the route via Guthrie, Ky., from Louisville, Cincinnati, and the east, though traffic ordinarily moves to Nashville from these latter points through Gallatin, Tenn., and not through Guthrie and Springfield. The rates to Springfield here assailed were shown to be higher than those to Nashville from all the points of origin named, and applications for relief covering these departures were heard with the complaint. The defendants contended that the lower rates maintained to Nashville were justified by the necessity of meeting competitive rates maintained by steamboat lines operating on the Cumberland, Ohio, and Mississippi rivers.

In *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, 55 I. C. C., 648, we found that the competition of the boat lines operating on the Cumberland, Ohio, and Mississippi rivers, encountered by the defendants therein, was not of such character as to control or to affect materially the rail rates to Nashville. An order was entered, forbidding defendants from charging rates to Nashville from eastern trunk line and New England territories, Ohio River crossings from Cairo, Ill., to Cincinnati, Ohio, inclusive, and from points beyond in central freight association and western trunk line territories, from St. Louis, Mo., and the lower Mississippi River crossings and points beyond in western trunk line territory, lower than those contemporaneously maintained on like traffic to Murfreesboro, Columbia, Dickson, Lebanon, Gallatin, and Watertown, Tenn., and other intermediate points. The finding and order in that case embraced Fourth Section Application No. 1952, which was also considered in connection with this complaint. The elimination of the fourth section deviations necessitated by our order of denial therein will go far toward the removal of the cause of complaint in the instant case.

Subsequent to the argument in this case the lines of the principal defendants were taken over by the President and until March 1, 1920, were operated by the Director General of Railroads. On August 8, 1918, all complainants in cases then pending were notified that where such complaints involved rates which had been increased or changed by order of the Director General, and the relief sought included the fixing of reasonable maximum rates for the future or the establishment of relationships, the Director General was regarded as a necessary party defendant, and complainants then before us were given an opportunity to file motions not later than October 1, 1918, making the Director General a defendant, and asking leave to file supplemental complaints, setting forth their causes of action against him. No such motion or supplemental complaint was filed by the complainants herein.

In view of the fact that a substantial measure of the relief asked will be secured as a result of our order in *Murfreesboro Board of Trade v. L. & N. R. R. Co.*, *supra*, and that material changes in the rates herein assailed have been made, producing somewhat different adjustments, we shall express no opinion as to the measure or relationships of rates in effect at the time of the hearing. The complaint will be dismissed.

No. 10595.

INLAND STEEL COMPANY ET AL.
v.
DIRECTOR GENERAL OF RAILROADS.

Submitted February 12, 1920. Decided April 5, 1920.

Upon reargument of the above-entitled case, reported in 55 I. C. C., 462, *Held*;
That the application of the same rate on iron and steel articles in carloads from Chicago, Ill., Terre Haute and Vincennes, Ind., and Pittsburgh, Pa., to Pacific coast ports, for export, is unduly prejudicial to Chicago, Terre Haute, and Vincennes.

Luther M. Walter for complainants.

W. E. Long for Northwestern Barb Wire Company; *Colin C. H. Fyffe* for Illinois Manufacturers Association; *C. L. Lingo* for Inland Steel Company.

B. L. Verner for National Rolling Mill Company and others, interveners.

James L. Coleman and *T. J. Norton* for defendant.

REPORT OF THE COMMISSION UPON REARGUMENT.

MEYER, Commissioner:

In the original report in this case, 55 I. C. C., 462, we found that a rate of 60 cents per 100 pounds on iron and steel articles in carloads from Chicago, Ill., to Pacific coast ports, for export to the Orient had not been shown to be unreasonable or unduly prejudicial. The 60-cent rate was applied from Chicago and all producing points east thereof to and including Atlantic seaboard points, and complainants' principal contention was that the maintenance of the 57 I. C. C.

same rate from Chicago as from points east thereof, more particularly Pittsburgh, and the disregard of differences in distance was unduly prejudicial to Chicago. The case is now presented on reargument granted on the petition of complainants.

Complainants show, by comparison of rates on pig iron, billets, and manufactured iron and steel articles, in carloads, from Chicago and Pittsburgh to Atlantic seaboard and Gulf ports, that in all instances in which the distance is less from Pittsburgh than from Chicago, the rate from Pittsburgh is lower, and that in instances in which the distance is less from Chicago, the rate from Chicago is lower, and urge that as Chicago is nearer to the Pacific coast ports than is Pittsburgh, the export rate from Chicago should be lower than that from Pittsburgh. On traffic destined to Europe, Africa, and South America, moving through Atlantic ports, Pittsburgh has the advantage of a rate to the Atlantic ports 18 cents lower than the rate from Chicago, while in the reverse direction, on traffic moving through Pacific coast ports, the two points are placed on the same basis.

The rates under attack were established pursuant to a policy of equalizing through charges via Atlantic and Pacific coast ports. In general, this policy may be described as follows: From among the various interior competing centers of production one was selected upon which to make the equalization. Pittsburgh was selected in this case, as being the point nearest to the Atlantic seaboard from which it was felt an equalization could be made without making unduly low rates. To the rail rate from Pittsburgh to New York there was added the ocean rate from New York to the foreign port of destination in the Orient—Kobe in this case. From the sum thus arrived at there was subtracted the ocean rate from Pacific coast ports to the same foreign port of destination. The difference was the rate which was supposed to equalize the routes via Atlantic and Pacific ports, and other producing points were placed on the same basis.

The ocean rates from New York and Pacific coast ports to the Orient, used for equalization purposes, are those published by the United States Shipping Board, and, while it is understood that approximately the same rates are applied by independent lines, and for a considerable period have remained the same, the Shipping Board has recently withdrawn all freight tariffs heretofore published, leaving the matter of rates in the hands of the operators of the vessels. Ocean rates are generally not published and are subject to fluctuations. It is by no means certain, therefore, that an equalization based on such rates constitutes a permanent basis upon which to construct the rail rates to the ports, because the equalization results only

from a particular and definite relationship of rates, and if one rate factor included in the calculations is variable, the equalization must be destroyed to the extent to which variations occur from the particular rate which was employed in the equalizing process. Unless this process of equalization rests upon substantial, fairly permanent, and controlling facts and natural relationships it can not be proper and lawful.

While, under a differential adjustment, the rate from both Pittsburgh and Chicago to the Orient via the Pacific coast ports might be higher than via the route through New York, the more expeditious service and lower insurance rates via the Pacific coast ports, it is believed, will tend to equalize the rate disadvantage. A similar situation was before us in *Western Export Iron and Steel Case*, 43 I. C. C., 129. At that time the through charge from Pittsburgh via Pacific coast ports was 12.4 cents higher than the corresponding charge through New York, and a difference in rates from Pittsburgh to San Francisco 5 cents higher than from Chicago was approved.

Even if it should be true, as was argued, that Chicago would get no benefit from the establishment of a rate made a differential lower than the rate from Pittsburgh on export business through the Pacific coast, because of the lower through charge still available to Pittsburgh manufacturers through the Atlantic ports, if the present adjustment does not meet the tests of reasonableness it should be set aside and replaced by a set of rates which does meet the requirements of reasonableness and propriety in relationship. It is our duty to prescribe rates that meet the tests of the law.

This case is not free from difficulties and doubt. A careful reconsideration of the entire record in the light of the reargument requires us to modify our previous findings. The record indicates that the congestion which existed at the port of New York when the export rates were established has been to some extent removed, and we believe that the rates should now be placed upon a more normal basis, according to manufacturers at Chicago the benefit of their location, 468 miles nearer to the Pacific coast than their Pittsburgh competitors.

The distance from Minnequa, Colo., to San Francisco is 819 miles less than the distance from Chicago and the export rate is 10 cents less. For the additional distance from Pittsburgh as compared with Chicago, the rate from Chicago should not be less than 6.5 cents per 100 pounds lower than the contemporaneous rate from Pittsburgh. Interveners located at Terre Haute and Vincennes, Ind., from which points the rates to the Atlantic seaboard and Pacific coast ports are the same as from Chicago, should be given the same basis.

We are of the opinion and find that the present rates on iron and steel articles in carload, from Chicago, Terre Haute, Vincennes, and Pittsburgh to Pacific coast ports, for export, are unduly prejudicial to Chicago, Terre Haute, and Vincennes and preferential of Pittsburgh to the extent that the rate from Chicago, Terre Haute, and Vincennes to Pacific coast ports exceeds a rate 6.5 cents per 100 pounds lower than the rate contemporaneously maintained from Pittsburgh to the same ports.

The Director General of Railroads is the only defendant. In our notice concerning procedure to be followed as to causes of action arising out of federal control, it is provided that as to complaints pending in which it is alleged that the rates complained of are in violation of any provision of the interstate commerce act and relief is sought for the future and the carriers over whose lines the rates apply are not already defendants, the complainant should promptly file a supplemental complaint containing appropriate allegations and naming said carriers as additional defendants. This complainants have failed to do, and no order for the future will be entered.

57 I. C. C.

No. 10780.
FORT DODGE COMMERCIAL CLUB
v.
DIRECTOR GENERAL, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted February 4, 1920. Decided April 7, 1920.

Class rates based on Mississippi River combinations, applicable between Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa, and points east of the Indiana-Illinois state line, found not unreasonable or unduly prejudicial. Complaint dismissed.

L. M. O'Leary and J. H. Henderson for complainant.

E. H. Draper, A. B. Combs, and J. H. Henderson for Marshalltown Club, intervener.

A. P. Humburg and J. N. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS HALL, DANIELS, AND WOOLLEY.

The complaint in this case alleges that the class rates, based on Mississippi River combinations, applicable to traffic between Fort Dodge, Kalo, and Gypsum, Iowa, and points in official classification territory east of the Indiana-Illinois state line are unreasonable and subject the three points named to undue prejudice and disadvantage.

Fort Dodge is in the northwestern quarter of Iowa, 192 miles west of Dubuque, Iowa, by way of the Illinois Central Railroad, and 85 miles northwest of Des Moines, Iowa. It is an important and growing community of about 25,000 people, and has many manufacturing and jobbing interests. It is on the main line of the Illinois Central and Chicago Great Western railroads from Chicago to the Missouri River, and is also served, principally as to north and south traffic, by the Chicago Great Western, the Minneapolis & St. Louis, and the Fort Dodge, Des Moines & Southern. Kalo and Gypsum are within the industrial and switching limits of Fort Dodge and are accorded the Fort Dodge rates on traffic to and from the east. They will be hereinafter considered as part of Fort Dodge and not specifically referred to.

The complaint is chiefly one of rate relationship. The principal points alleged to be unduly preferred are Chicago, Ill., Minneapolis and St. Paul, Minn., Mississippi and Missouri river crossings, and interior Iowa cities, such as Cedar Rapids, Des Moines, Marshalltown, Mason City, Ottumwa, and Waterloo. A number of Fort Dodge manufacturers and distributors of groceries, hardware, clothing, knit goods, plumbing supplies, and various other commodities appeared at the hearing and testified as to the competition they meet from these points.

A number of comparisons were offered by complainant showing that the rates from the east to Fort Dodge, plus the rates from Fort Dodge to certain points in its distributing territory, are higher in the aggregate than the in-and-out rates enjoyed by competing jobbing centers for total hauls of similar length. In the table below, for instance, the total distances and total freight charges, as given by complainant, on first-class traffic from New York City to Ceylon, Minn., are shown:

Jobbing point.	Total distance.	Total freight charges.	Difference in freight charges in favor of competitors.
	<i>Miles.</i>		<i>Cents.</i>
Fort Dodge, Iowa.....	1,368	\$2.69	.....
Chicago, Ill.....	1,356	2.02	66
Winona, Minn.....	1,405	2.26	42
St. Paul, Minn.....	1,459	2.15	53
Dubuque, Iowa.....	1,346	2.19	50
Clinton, Iowa.....	1,356	2.19	50
Davenport, Iowa.....	1,410	2.19	50
Muscatine, Iowa.....	1,435	2.19	50
Rock Island, Ill.....	1,410	2.19	50
Burlington, Iowa.....	1,427	2.21	47
Fort Madison, Iowa.....	1,442	2.21	47
Keokuk, Iowa.....	1,441	2.21	47
Quincy, Ill.....	1,518	2.21	47
Hannibal, Mo.....	1,523	2.21	47
Louisiana, Mo.....	1,576	2.21	47
St. Louis, Mo.....	1,558	2.21	47
Des Moines, Iowa.....	1,419	2.23	46
Sioux City, Iowa.....	1,577	2.63	6

Ceylon is directly across the Iowa state line, 94 miles northwest of Fort Dodge, and is located in what Fort Dodge considers its natural trade territory. It will be noted that in every instance shown Fort Dodge is at a substantial rate disadvantage, although the total distance via Fort Dodge is practically the same as or less than via any other point named. However, the effects produced are due mainly to the outbound rates which are not here in issue and to the fact that all the rate scales in and out of the jobbing centers do not progress in the same degree for a given increase in distance. The comparisons therefore do not afford any definite proof with respect

to the rates under consideration. It is impossible under the present system of rate making in this country so to adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in common markets.

Class traffic between Fort Dodge and the east moves on proportional rates to and from the Mississippi River crossings. The complaint in terms assails the combination through rates thus made, but as a practical matter concerns only the proportional rates west of the Mississippi River. Complainant disclaims any attack upon the reasonableness of the rates between the Mississippi River and the east, or upon the reasonableness of the rates between the Mississippi and Missouri rivers, but contends that the latter rates are not properly apportioned with respect to Fort Dodge. The proportional rates applying between the Mississippi River crossings and the interior Iowa points, including Fort Dodge, are based on our decision in *Interior Iowa Cases*, 46 I. C. C., 39. In that proceeding a 14-block distance scale for 300 miles was prescribed which was arrived at by prorating across the state the 55-cent Mississippi-Missouri river proportional scale found reasonable in *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546. The proportional rate applicable at any interior Iowa point is based on its distance from the nearest west-bank Mississippi River crossing. Dubuque is the nearest crossing to Fort Dodge. The present proportional rates between the Mississippi River and Fort Dodge are those that were prescribed by the Commission for hauls ranging from 181 to 200 miles, with the increase of 25 per cent made in accordance with General Order No. 28 of the Director General.

Owing to the bend in the Mississippi River, the eastern border of the state of Iowa bulges, so to speak, toward the east. Practically all of Fort Dodge's eastbound and westbound traffic moves via Dubuque, which is situated on the bulge, and the distance between Fort Dodge and Dubuque is therefore greater than if Dubuque were moved farther west so as to place it directly north of Burlington, Iowa, a Mississippi River crossing not on the bulge. In other words, Fort Dodge is at a geographical disadvantage because the Mississippi River does not constitute a straight north and south boundary line for the state of Iowa. The complaint was brought because of the disadvantageous rates resulting from Fort Dodge's location.

The distance via the Illinois Central from Dubuque to Fort Dodge, as stated, is 192 miles, while from Dubuque to Council Bluffs, Iowa, it is approximately 325 miles, or the same as the average distance between the rivers. The distance to Fort Dodge is about 60 per cent of the distance to Council Bluffs, and complainant contends, therefore, that the Fort Dodge rate basis should be 60 per cent of the

Mississippi-Missouri river rates. At present the rates between the Mississippi River and Fort Dodge average about 73 per cent of the Mississippi-Missouri river rates. The present rates between the Mississippi River and Missouri River, together with those at present in effect and those asked between the Mississippi River and Fort Dodge, are shown below:

Mississippi River to—	Classes.									
	1.	2	3	4	5	A	B	C	D	E
Missouri River.....	69	51.5	40	30	25	27.5	22.5	19	15	12.5
Fort Dodge, at present.....	50	37.5	29	22.5	19	20	16.5	13	10.5	9.5
Fort Dodge, asked.....	41.5	31	24	18	15	16.5	13.5	11.5	9	7.5

Complainant also contends that in the *Interior Iowa Cases, supra*, instead of prescribing a distance scale to be used in connection with short-line distances to the nearest crossing, the Commission might have divided the state, geographically and without reference to railroad mileage, into strips or zones extending in a northerly and southerly direction, but bulging toward the east in conformity with the course of the Mississippi River. In *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, 201, in which was involved the basis for rates from Iowa to points in Colorado and Utah, the Commission said that the state of Iowa should be divided into five zones and rates from each zone constructed by adding to the Missouri River rate one-fifth of the total spread, whatever that might be. Counting the zones east from the Missouri River the first-class rate for the first zone was to be constructed by adding to the Missouri River rate 20 per cent of the spread; for the second zone, 40 per cent; for the third, 60 per cent; for the fourth, 80 per cent; and for the fifth, 100 per cent. Following that decision, the carriers placed Fort Dodge; so far as Colorado and Utah points were concerned, in the 40 per cent zone, or, in other words, in the zone which would be a 60 per cent zone counting from the Mississippi River west.

The scale prescribed in the *Interior Iowa Cases, supra*, was divided into, or progressed by, 25-mile blocks for the first 100 miles and by 20-mile blocks for greater distances. Complainant suggests that the blocks might well have been made larger instead of smaller as the distances increased. Had the 25-mile blocks been continued for the second 100 miles Fort Dodge's proportional rates would have been as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	45	34	26	20	16	16.5	14.5	12	10	8

These rates would be accepted as satisfactory by complainant if the 41.5-cent scale sought, made on the basis of 60 per cent of the Mississippi-Missouri river rate, should be deemed by the Commission to be too low. According to one of the witnesses for complainant, the change in blocks would not affect the other interior Iowa jobbing centers with the exception of Marshalltown, apparently because they are not near enough to the edges of the mileage blocks in which they are located to get a reduction by such a change.

The Marshalltown Club intervened at the hearing, with the consent of counsel for defendants, and put in issue the propriety of the proportional class rates between Marshalltown and the Mississippi River on traffic to or from the east. It seeks the same sort of relief as complainant. Marshalltown is an important jobbing center in the east-central part of the state and southeast of Fort Dodge. It is 148 miles west of Dubuque by way of the Chicago Great Western, and by way of the Chicago & North Western it is 151 miles west of Clinton, Iowa, which, like Dubuque, is on the bulge of the Mississippi River. Via the Chicago & North Western the distance from Clinton to Marshalltown is 43.5 per cent of the distance from Clinton to Council Bluffs. The present proportional class rates between Marshalltown and the Mississippi River, which are approximately 58 per cent of the Mississippi-Missouri river rates, and those asked by the intervener, based on 43.5 per cent of the Mississippi-Missouri river rates, are shown below:

Class.....	1	2	3	4	5	A	B	C	D	E
Present.....	40	30	22.5	17.5	14	16.5	13	10.5	9	7.5
Asked.....	30	22.5	17.5	13	11	12	10	8.5	6.5	5.5

Using the average distance via six different routes from the Mississippi River crossings, Marshalltown's distance from the Mississippi is 48 per cent of the Mississippi-Missouri river distance. Rates based on this percentage would, of course, be somewhat higher than if based on the percentage of 43.5.

If the mileage blocks in the *Interior Iowa Cases, supra*, had been 25 miles instead of 20 for distances over 100 miles, as before referred to, the rates at Marshalltown would have been as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	35	26	20	15	12.5	14	12	9.5	7.5	7

Fort Dodge and Marshalltown are not the only interior Iowa points whose traffic moves via crossings on the bulge. Fort Dodge and Marshalltown pay the same proportional rates as other Iowa points the same distance west of the nearest Mississippi River crossing. These rates, when added to the proportional rates between the Mississippi River and the east, make through rates which are the

same for substantially equal distances as to and from other interior Iowa points, and all these rates bear a reasonable relation to each other. If the 25-mile blocks were continued for the third 100 miles, the first-class rate for 300 miles would be 60 cents, or 9 cents less than under the existing scale. The change suggested would result in a reduction of the number of blocks from 14 to 12, and it is apparent that it would necessitate a complete revision of the present 69-cent scale if the latter scale is to be equitably prorated between the rivers.

The various rate comparisons and other data filed at the hearing have had full consideration. The adjustment prescribed in the *Interior Iowa Cases*, *supra*, was determined upon after extensive and careful investigation, and the perplexing angles of the situation that are here laid before us were all there considered. It was impossible to arrange for rates that would be wholly satisfactory to each individual city, and it was believed that the rates prescribed would meet the difficulties so far as was practicable.

DANIELS, Commissioner:

A report of the examiner in which substantially the foregoing statements of fact are set forth, with the recommendation that we find that the rates assailed are not unreasonable or unduly prejudicial, was served upon the parties. Exceptions were filed by complainant and intervener which are directed principally to the conclusion reached by the examiner, no material error of fact being alleged. The adjustment of rates assailed was prescribed by us after an extensive and exhaustive investigation as an adjustment best adapted to afford reasonable and equitable rates from and to the various interior Iowa cities with respect to the traffic here in question. In *Interior Iowa Cases*, 46 I. C. C., 39, 60, we said:

In the absence of substantial reasons for a change, the principle herein announced, but not the rates themselves, should remain permanent even though conditions may in the future require either increases or reductions in the amounts of the rates; that is to say, the Mississippi-Missouri river proportional scale, whatever its level, should in the future be the basis for fixing rates between the territory east of the Indiana-Illinois state line and the interior Iowa cities.

Upon consideration of the record and exceptions we find nothing therein which would warrant us in disturbing that adjustment. The foregoing is accordingly adopted as our own report, and an order dismissing the complaint will be entered.

No. 10612.
CHAMPION FIBRE COMPANY
v.
DIRECTOR GENERAL AND SOUTHERN RAILWAY
COMPANY.

Submitted October 15, 1919. Decided April 8, 1920.

Rates on bituminous coal from Coal Creek, Tenn., to Canton, N. C., found not unreasonable. Complaint dismissed.

Francis B. James, H. T. Ratliff, E. E. Williamson, Ewing H. Scott,
and *Wayne P. Ellis* for complainant.

Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Complainant is a corporation engaged in manufacturing wood pulp at Canton, N. C. By complaint filed May 1, 1919, it alleges that the rates charged by defendants for the transportation of bituminous coal, in carloads, from Coal Creek, Tenn., to Canton have been since July 1, 1917, and are now unjust and unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. The complainant asks reparation and the establishment of a reasonable rate for the future. Rates herein are stated in amounts per ton of 2,000 pounds.

Coal Creek, where complainant owns coal mines, is located on the Southern Railway about 31 miles northwest of Knoxville, Tenn. Canton, a city with a population of 5,000, is 179 miles from Coal Creek and 18 miles southwest of Asheville, N. C., on the Murphy branch of the Southern Railway. On July 1, 1917, the rate in issue was \$1.70; on June 25, 1918, it was increased to \$2.20, and on April 22, 1919, reduced to \$2.10. Complainant contends that the rate of \$1.70 was unreasonable to the extent that it exceeded \$1.55 and that the subsequent rates of \$2.20 and \$2.10 should not have exceeded \$1.90.

From April 1, 1897, to January 24, 1906, the rate on coal from Coal Creek to Canton was \$1.75. The rate to Asheville was \$1.60 except for a short period. In 1905 complainant arranged to locate its pulp mills at Canton, and pursuant to agreement entered into with complainant, the Southern Railway established, effective January 24, 1906, a rate of \$1.40 on coal from Coal Creek to Canton. Upon complaint of other fiber companies the rate of \$1.75 was restored for a time, but the \$1.40 rate was reissued, effective October 6, 1907, when the plant was about to begin operations. In order to comply with section 4 of the act to regulate commerce it was necessary to reduce the rate to Asheville 20 cents and to all other points in North Carolina intermediate to Canton from Coal Creek 10 cents. Rates on coal from the Appalachia district in southwestern Virginia to Carolina points were published on a differential basis over the rates from the Coal Creek district, and this rate adjustment has been considered by the Commission in its decisions in *Black Mountain Coal Land Co. v. S. Ry. Co.*, 15 I. C. C., 286, *Andy's Ridge Coal Co. v. Southern Ry. Co.*, 18 I. C. C., 405, and *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C., 222. In the general readjustment following *Victor Mfg. Co. v. S. Ry. Co.*, *supra*, the rate to Canton from Coal Creek was increased to \$1.50, effective October 15, 1911.

In the case of the *Union Tanning Co. v. S. Ry. Co.*, 25 I. C. C., 112, the rate on coal from the Appalachia field to Old Fort, N. C., was in issue. The rate attacked was not found unreasonable, but a rate in excess of 5 cents over the rate to Canton was found unduly prejudicial to Old Fort. In the resulting readjustment the rate from Coal Creek to Canton was increased to \$1.60 on January 15, 1913, and again increased to \$1.70 on July 1, 1917, following the decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303. It was further increased to \$2.20 on June 25, 1918, under authority of General Order No. 28 of the Director General. Effective April 22, 1919, the Railroad Administration reduced it to \$2.10.

Complainant contends that the rate of \$1.40 to Canton, effective October 6, 1907, was just and reasonable in itself and relatively in comparison with rates contemporaneously in effect to other points in the Carolinas and that the successive advances in the rate to Canton were excessive and not uniformly made to other points. In support of its contention complainant submitted a comparison of the rates to Canton with rates to numerous destinations in Carolina territory contemporaneously in effect, showing the various increases in rates since October 6, 1907, the distances, ton-mile earnings, and total increases. The following table is compiled from complainant's exhibit,

From Coal Creek to—	Miles. ¹	Oct. 6, 1907.	Per ton- mile.	Apr. 22, 1919.	Per ton- mile.	Increase
			<i>Mills.</i>		<i>Mills.</i>	<i>Cents.</i>
Hot Springs, N. C.	127	\$1.40	11	\$2.00	15.7	0.60
Asheville, N. C.	165	1.40	8.5	2.10	12.7	.70
Canton, N. C.	183	1.40	7.7	2.10	11.5	.70
Spartanburg, S. C.	215	1.85	7.9	2.40	10.2	.55
Carlisle, S. C.	276	2.10	7.6	2.65	9.6	.55
Statesville, N. C.	280	2.10	7.5	2.70	9.6	.60
Gastonia, N. C.	289	2.10	7.3	2.75	9.5	.65
Alston, S. C.	303	2.10	6.9	2.80	9.2	.70

¹ Coal Creek group average distance.

The comparison supports complainant's contention that the rate to Canton has been subjected to a greater total increase since 1907 than the rates to the majority of the other destinations shown, but is not probative of complainant's contention that the rate of \$1.40 was properly aligned with rates to other destinations. It is apparent from a comparison of the rates and ton-mile earnings that the present rates conform to the principle that ton-mile earnings should decrease as distances increase, whereas the \$1.40 rate to Canton violated that principle in that the earnings of 7.7 mills under that rate were less than the earnings to Spartanburg, 52 miles farther distant. On the ton-mile basis Canton was practically on an equality with Carlisle, S. C., nearly 100 miles more distant.

The wood pulp manufactured by complainant is sold in the territory north of the Ohio and Potomac rivers. Complainant's nearest competitors are located at Bristol and Kingsport, Tenn., and Williamsburg, Johnsonburg, and Tyrone, Pa. The increase in rates, effective June 25, 1918, at the points named ranged from 20 cents to 35 cents on coal, while complainant was subjected at the same time to an increase of 50 cents. The mills at the above-named points are, however, less distant from their coal supply than complainant.

It is conceded by complainant that a reduction of the present rate to Canton would necessitate rate reductions to Asheville and other intermediate points and also at some points on the lines east of Asheville. Defendants maintain that a reduction to Canton would bring about a reduction to Old Fort and numerous other points, and would necessitate a readjustment of the rates from the Virginia fields, thus disrupting the entire rate adjustment.

Defendants show that Canton, although 18 miles farther distant and on a branch line, takes the same rate as Asheville, the junction point of the Murphy branch with the main line. Asheville has a population of 25,000 and necessarily consumes considerable coal, though not as much as Canton. Defendants point out the operating difficulties on the Murphy branch and show that the entire branch,

123 miles in length, has not paid operating expenses, but the revenue accruing from or the operating cost of the traffic to and from Canton, amounting to 75 per cent of the total tonnage on the branch, was not shown separately. Defendants also submitted statements showing in detail the increased cost of material, equipment, and labor, and assert that the percentage of increase in transportation costs far exceeds the percentage of increase in coal rates.

Defendants contend that the successive increases in coal rates to Canton have not been disproportionate or excessive. They maintain that the rate of \$1.40 established in October, 1907, was a concession in order to develop a large industry, and that the rate of \$1.75 previously maintained for many years compares favorably with the rates contemporaneously in effect to other Carolina points from the Coal Creek and Appalachia districts. It is asserted that the rate of \$1.70, effective July 1, 1917, was the result of adjustments made in conformity with the decisions of the Commission in the cases previously named. A comparison, compiled from defendants' exhibits, of the rates from the Appalachia and Coal Creek districts to Canton, Asheville, and Old Fort, previously named, and to other typical destinations in Carolina territory, showing rates in effect prior to and since the establishment of complainant's plant, is shown below:

To—	From—	Mar. 12, 1907.	Oct. 6, 1907.	Oct. 15, 1911. ¹	Mar. 15, 1913. ²	July 1, 1917. ³	June 25, 1918.
Asheville.....	Coal Creek.....	\$1.60	\$1.40	\$1.50	\$1.55	\$1.65	\$2.10
Do.....	Appalachia.....	1.80	1.60	1.60	1.65	1.75	2.20
Canton.....	Coal Creek.....	1.75	1.40	1.50	1.60	1.70	2.20
Do.....	Appalachia.....	1.95	*1.70	1.60	1.70	1.80	2.30
Old Fort.....	Coal Creek.....	1.85	1.90	1.75	1.65	1.80	2.25
Do.....	Appalachia.....	2.10	2.10	1.85	1.75	1.90	2.35
Marion.....	Coal Creek.....	1.90	2.00	1.85	1.85	1.95	2.40
Do.....	Appalachia.....	2.15	2.15	1.85	1.85	1.85	2.30
Morganton.....	Coal Creek.....	2.00	2.10	2.05	1.95	2.05	2.50
Do.....	Appalachia.....	2.25	2.25	2.15	2.05	2.05	2.50
Hendersonville.....	Coal Creek.....	1.85	1.70	1.70	1.65	1.75	2.20
Do.....	Appalachia.....	2.05	*1.90	1.80	1.75	1.85	2.30
Spartanburg.....	Coal Creek.....	1.85	1.85	1.85	1.85	1.95	2.40
Do.....	Appalachia.....	2.05	*2.05	1.95	1.95	1.95	2.40

¹ Following *Victor Manufacturing Company Case*.

² Following *Union Tanning Company Case*.

³ Following *The Fifteen Per Cent Case*.

⁴ Effective Oct. 23, 1907.

It is apparent that the relationship of the rates in effect from Coal Creek to Canton and other Carolina destinations subsequent to March 15, 1913, is substantially similar to that which existed prior to the publication of the \$1.40 rate to Canton, whereas the \$1.40 rate in effect on October 6, 1907, shows a materially increased spread to the advantage of Canton over the other North Carolina destinations. The subsequent adjustments more nearly equalize the spread in these rates to the basis existing March 12, 1907. The propriety of the increase effected by the *Fifteen Per Cent Case*, *supra*, is not questioned by complainant.

General Order No. 28 provided that when rates from producing points or destinations were based on fixed differentials in cents per ton such differentials should be maintained and that the increase should be figured on the highest rate or group. The mines at Bon Air, Tenn., were the highest-rated group, and when the rate from that point was increased from \$2.20 to \$2.70, the Coal Creek rate was increased from \$1.70 to \$2.20, preserving the existing differential of 50 cents under Bon Air. Complainant contends that it was improper to use the Bon Air group as a basis for rates from related points, as no coal is shipped from Bon Air to Canton or Asheville. It is defendants' position that the advance was effected in strict compliance with the rule and was not excessive, being 29.4 per cent of the former rate. Defendants also refer to numerous rates on coal in the south for hauls comparable in length with the distance from Coal Creek to Canton, which were advanced under authority of General Order No. 28 to the extent of 40, 45, or 50 cents.

Upon the whole record we are of the opinion and find that the rates in effect from Coal Creek, Tenn., to Canton, N. C., from July 1, 1917, to the filing of the complaint herein were not and are not unreasonable. An order dismissing the complaint will be entered.

No. 10700.

UNION TANNING COMPANY

v.

DIRECTOR GENERAL, CAROLINA, CLINCHFIELD & OHIO
RAILWAY, ET AL.

Submitted January 7, 1920. Decided April 8, 1920.

Rates on bituminous coal from the Appalachia group of mines in southwestern Virginia to Old Fort, N. C., found not unreasonable. Complaint dismissed.

W. C. Mitchell for complainant.

Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

This proceeding was made the subject of a proposed report which was served upon the parties. Exceptions were filed by complainant. Our report follows to a large extent that proposed by the examiner.

Complainant operates a tannery and manufactures tanning extract at Old Fort, N. C. By complaint, filed June 11, 1919, it alleges that the rates charged by defendants for the transportation of bituminous coal from the Appalachia and Dante coal-mining groups in southwestern Virginia, and more particularly Arno, Appalachia, Andover, Exeter, Keokee, and Stonega, Va., to Old Fort, have been, since July 1, 1917, and are now, unjust and unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. The complaint asks for reparation and for the establishment of reasonable rates for the future.

Old Fort is a local point on the Southern Railway between Marion, N. C., and Asheville, N. C., 11 miles west of Marion and 30 miles east of Asheville. The points of origin are located in what is known as the Appalachia coal field in southwestern Virginia. The rates from the Appalachia district to points in this territory west of Marion, a junction with the Carolina, Clinchfield & Ohio Railway, are based on the rates from the Coal Creek district in Tennessee and are 10 cents per ton higher than the Coal Creek rates. Defendants state that as a rule the coal, whether originating at points on the Southern

Railway or on the lines of other carriers serving the Appalachia district, moves to Old Fort by way of the Southern through Morristown, Tenn., and Asheville. This is said to be for operating reasons and to avoid departures from the long-and-short-haul rule of the fourth section. Under the tariffs the rates are applicable by way of the Carolina, Clinchfield & Ohio Railway through Marion, and complainant urges that at least from the Dante group the movement is via this route. The average distance from the mines served by the Southern Railway to Old Fort by way of Asheville is 230 miles, and from mines on the Interstate Railroad moving by way of the Norfolk & Western Railway and Carolina, Clinchfield & Ohio to Johnson City, Tenn., thence Southern Railway, it is 305 miles. The average distance from the Dante district, served by the Carolina, Clinchfield & Ohio, is 271 miles by way of Johnson City and 200 miles by way of Marion.

The rates in effect to Old Fort, Asheville, Canton, N. C., and Marion on July 1, 1917, and as subsequently changed, are stated below. Canton is a local point on the Southern Railway, 18 miles west of Asheville.

Rates on bituminous coal from mines in the Appalachia group.

To—	Route.	Miles.	Effective July 1, 1917.	Effective June 25, 1918.	Present rates.
Old Fort.	Southern Railway.....	230	\$1.90	\$2.35	\$2.25
Do...	I. R. R., N. & W., C. C. & O., S. Ry	305	1.85	2.30	2.25
Asheville	Southern Railway.....	200	1.75	2.20	2.20
Do...	I. R. R., N. & W., C. C. & O., S. Ry	276	1.75	2.20	2.20
Canton.	Southern Railway.....	218	1.80	2.30	2.20
Do...	I. R. R., N. & W., C. C. & O., S. Ry	294	1.80	2.30	2.20
Marion.	Southern Railway.....	241	1.85	2.30	2.30
Do...	I. R. R., N. & W., C. C. & O., direct	222	1.85	2.30	2.30

In January, 1907, the rate on bituminous coal from the Appalachia district to Old Fort was \$2.10 per net ton, and from the Coal Creek district \$1.85. The decisions in *Black Mountain Coal Land Co. v. S. Ry. Co.*, 15 I. C. C., 286; *Andy's Ridge Coal Co. v. Southern Ry. Co.*, 18 I. C. C., 405; and *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C., 222, necessitated various changes in these rates, so that between October 15, 1911, and January 15, 1913, the rate was \$1.85 from the Appalachia district and \$1.75 from Coal Creek. The rate from the Appalachia mines to Old Fort was considered in *Union Tanning Co. v. S. Ry. Co.*, 25 I. C. C., 112, decided October 15, 1912. It was alleged in that proceeding that the rate of \$1.85 was unreasonable and unjustly discriminatory by comparison with a rate of \$1.60 then in effect from the same mines to Canton. The Commission found that the rate to Old Fort,

57 I. C. C.

while not shown to be unreasonable, was unduly prejudicial to the extent that it exceeded the Canton rate by more than 5 cents per ton.

In compliance with the decision in that case the carriers reduced the rate to Old Fort 10 cents per ton, or to \$1.75, effective January 15, 1913, and increased the rate to Canton to \$1.70. These rates remained in force until July 1, 1917, when, under permission granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rate to Old Fort in effect by way of the Southern Railway was increased 15 cents. The joint rate maintained in connection with the Carolina, Clinchfield & Ohio by way of Johnson City was increased 10 cents. Rates to Canton and many other points in this territory were likewise increased 10 cents. The next change occurred on June 25, 1918, under General Order No. 28 of the Director General. That order provided that when rates on coal had been increased less than 15 cents per ton since June 1, 1917, the difference between the amount of the increase and 15 cents should be added to the rates then in effect and the resultant rates increased on the basis of specific amounts set out in the order.

It was further provided that when rates from producing points were based on fixed differentials such differentials should be maintained, and that the increases should be figured on the highest-rated group; in this case Bon Air, Tenn. The increase as applied to the rate from Bon Air was 40 cents per ton, and allowing for disposition of fractions resulted in a rate of \$2.30 from the Appalachia group to Old Fort and Canton, and this rate was made effective to Old Fort by way of the Carolina, Clinchfield & Ohio through Johnson City. However, the Southern Railway, in order to restore the difference of 5 cents between the Old Fort and Canton rates on traffic from the Appalachia district, applied under our finding in *Union Tanning Co. v. S. Ry. Co.*, *supra*, added 5 cents to the rate to the former point. Subsequently, upon applications of the Champion Fibre Company, of Canton, and of complainant to the Louisville District Freight Traffic Committee, the rate of the Southern Railway to Old Fort was reduced 10 cents per ton; that of the Carolina, Clinchfield & Ohio and Southern through Johnson City 5 cents per ton; and a reduction of 10 cents was made in the rate to Canton. The present rates, therefore, are \$2.25 and \$2.20, respectively. These changes were not accompanied by a reduction in rates to other points in this territory.

It is the contention of complainant that inasmuch as there is no movement of coal from the Bon Air group of mines to Old Fort and points in the surrounding territory it was improper, under General Order No. 28, to have taken the rates from that group as the basis for rates from

related groups. The highest-rated group from which there has been a movement of coal to Old Fort is the Jellico, Tenn., group, from which the rate to Old Fort on June 24, 1918, was \$1.90 per ton. The increase authorized under General Order No. 28 applied to that rate would have been 30 cents per ton, and would have produced a rate of \$2.20 to Old Fort from both the Jellico and Appalachia districts.

Complainant also contends that the rate from mines in southwestern Virginia should not exceed those from the Coal Creek district. The distance from Coal Creek is 196 miles as compared with 200 miles from the Dante group, adjoining the Appalachia group, by way of the route through Marion. Via the route through Asheville from the Appalachia group the average distance is 267 miles, and from the Dante group, 235 miles. The present rate of \$2.25 to Old Fort is 5 cents lower than the rate to Marion, and there is therefore a departure from the provisions of the fourth section on such traffic as may move through Marion. This departure is without authority and should be corrected.

Complainant did not undertake to show that the rate to Old Fort was unreasonable *per se*, relying on the testimony taken in *Champion Fibre Co. v. Director General*, 57 I. C. C., 349, decided contemporaneously herewith, in which complaint is made against the rates from Coal Creek to Canton in effect since July 1, 1917. On the other hand, defendants submitted numerous comparisons tending to show that the rates to Old Fort during the period covered by the complaint have not been excessive. For example, they compare the rate of \$1.90 from Appalachia to Old Fort in effect via the Southern Railway prior to June 25, 1918, a distance of 230 miles, with a rate of \$1.95 from the Dante group to Spartanburg, a distance of 244 miles, and with a rate of \$2.20 from the Pocahontas group to Winston-Salem, a distance of 262 miles. On June 25, 1918, the rate to Old Fort was increased 45 cents per ton, while the rates to Spartanburg and Winston-Salem were increased 45 cents and 50 cents, respectively. The subsequent reduction in the Old Fort rates made the increase over the previous rates 35 cents in the case of traffic moving over the Southern Railway and 40 cents in the case of traffic moving over the Carolina, Clinchfield & Ohio and Southern through Johnson City. Many other similar comparisons were made. Other exhibits were filed showing the increases in the costs of operation in 1918 over 1917 and preceding years.

As hereinbefore stated, we had under consideration in 1912 the reasonableness and propriety of a rate of \$1.85 from Appalachia to Old Fort. We did not find that rate unreasonable, but in order to effect the readjustment required the carriers reduced it 10 cents per

ton. Subsequently authority was granted in *The Fifteen Per Cent Case*, *supra*, to increase all bituminous coal rates in southern territory 15 per cent, with a maximum of 15 cents per ton. Accordingly the rate via the Southern Railway became \$1.90, but for some reason not explained upon this record the rates to other points and to Old Fort via the Carolina, Clinchfield & Ohio and Southern through Johnson City were increased only 10 cents. The rate of \$1.90 resulted in a higher rate to Old Fort than was contemporaneously in effect over the same route to Marion, a more distant point, and also increased the spread between the Old Fort and Canton rates to 10 cents. It can not be said upon this record that that rate, expressly authorized in *The Fifteen Per Cent Case*, was unreasonable. It may have been unduly prejudicial, but undue prejudice was not alleged in the complaint nor shown at the hearing. Moreover, as was said in *Oregon Fruit Co. v. S. P. Co.*, 50 I. C. C., 719, in the absence of proof of damage to the shipper the fact that carriers have charged or received rates which violate the long-and-short-haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation. The departure from the provisions of the fourth section was corrected when the present rates became effective and the rate to Old Fort is now 5 cents lower than that to Marion.

While the method of applying the increase under General Order No. 28 might appear to be subject to criticism, when the resulting rate is compared with other rates in this territory, it does not appear to be out of line.

Upon consideration of the whole record we are of the opinion and find that the rates assailed on bituminous coal to Old Fort were not and are not unreasonable as alleged. The complaint will be dismissed.

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No. 10788.

CUBAN MOLASSES COMPANY

v.

DIRECTOR GENERAL, MOBILE & OHIO RAILROAD
COMPANY, ET AL.

Submitted February 16, 1920. Decided April 1, 1920.

Rate of 29 cents per 100 pounds on blackstrap molasses, in tank-car loads from Mobile, Ala., to Rondout, Ill., found to have been unreasonable to the extent that it exceeded 23 cents. Reparation awarded.

C. R. Hillyer for complainant.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

By DIVISION 3:

No exceptions were filed to the proposed report.

Complainant, C. U. Snyder, trading under the name of Cuban Molasses Company, is engaged in the mixed-feed business at various points throughout the United States with principal offices at Chicago, Ill. By complaint seasonably filed, as amended, he alleges that the rate of 29 cents per 100 pounds charged by defendants for the transportation of 11 tank-car loads of blackstrap molasses from Mobile, Ala., to Rondout, Ill., during the period from January 21 to April 8, 1915, was unreasonable and unduly prejudicial to the extent that it exceeded 23 cents. Reparation only is asked. Rates will be stated in cents per 100 pounds.

The shipments moved over the Mobile & Ohio Railroad to East St. Louis, Ill., Chicago, Burlington & Quincy Railroad to Chicago, and Chicago, Milwaukee & St. Paul Railway to destination. They were loaded in tank cars furnished by the Chicago, Burlington & Quincy and were routed via that line as an intermediate carrier in order that it might participate in the traffic, apparently under the erroneous assumption that the rate of 23 cents which was applicable via other lines also applied over the route named. Charges were originally collected at the 23-cent rate. A year or more later it was discovered that the rate legally applicable over the route of movement was 29 cents and that the shipments had been undercharged

6 cents. The undercharges have been paid. On June 25, 1916, the 23-cent rate was established over the route of movement. At the time these shipments moved the 23-cent rate was applicable via the route of movement to Milwaukee, Wis., a farther distant point.

Defendants admit that the rate assailed was unreasonable and express willingness to make reparation to the basis of the lower rate subsequently established. In proceedings upon the special docket we found that the rate of 29 cents paid by complainant upon certain other shipments of the same commodity between the same points from March 25 to April 19, 1915, inclusive, was unreasonable and awarded reparation to the basis of the 23-cent rate.

We find that the rate assailed was unreasonable to the extent that it exceeded 23 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that he was damaged thereby to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record and the complainant should comply with rule V of the Rules of Practice. No order for the future is necessary.

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No. 10874.¹

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, PHILADELPHIA, BALTIMORE &
WASHINGTON RAILROAD COMPANY, ET AL.

Submitted January 16, 1920. Decided April 1, 1920.

Rate charged on shipments of caustic soda, in carloads, from Elkton, Md., to Hopewell, Va., over the route of movement found not to have been unreasonable. Shipments found to have been misrouted by the initial carrier. Reparation awarded.

Harvey S. Farrow, for complainant.

Henry Wolf Biklé, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

These cases were consolidated and made the subject of a proposed report. Exceptions thereto were filed by complainant. The following is the report so proposed, with such modifications as appeared appropriate from our examination of the record and the exceptions filed:

By complaints seasonably filed, as amended, the complainant, a corporation engaged in the manufacture of explosives, alleges that 15 carloads of caustic soda forwarded from Elkton, Md., to Hopewell, Va., during the period from September 8 to December 24, 1917, were misrouted and that by reason thereof it has been subjected to the payment of unjust and unreasonable charges. It also alleges that the rate applicable over the route of movement was unjust and unreasonable. Reparation is asked. Rates will be stated in cents per 100 pounds.

The shipments, which were not routed by the shipper, moved from Elkton over the Philadelphia, Baltimore & Washington Railroad to Potomac Yard, Va., Washington Southern and Richmond, Fredericksburg & Potomac railroads to Richmond, Va., and Norfolk & Western Railway to destination. Charges were collected at the rate

¹ This report also embraces No. 10921, Same v. Same.

of 31 cents applicable over the route of movement. If the shipments had moved via the Philadelphia, Baltimore & Washington to Wilmington, Del., Pennsylvania and New York, Philadelphia & Norfolk railroads to Norfolk, Va., and beyond over the Norfolk & Western a rate of 21.1 cents would have applied on the shipments made prior to October 1, 1917, and a rate of 16.8 cents on those on and after that date. These rates were combinations of the rates of 8.5 cents prior to October 1, 1917, 4.2 cents thereafter, from Elkton to Wilmington, and 12.6 cents beyond. Prior to the movement of the shipments complainant requested the Pennsylvania Railroad to establish from Elkton to Hopewell the rate of 12.6 cents in effect from Wilmington to Hopewell. The Pennsylvania declined to do this, but offered to establish a rate of 15.8 cents from Elkton to Hopewell via the Norfolk route. This rate was never established. On June 25, 1918, following General Order No. 28 of the Director General of Railroads, the 16.8-cent rate was increased to 21 cents, the present rate.

Defendants admit that the shipments were misrouted and state that the claim would have been adjusted on the basis of the rate of 16.8 cents but for the fact that complainant sought adjustment at a rate of 15.8 cents. They further state that at the time when these shipments moved 15.8 cents would have been a reasonable rate via Norfolk and that they had intended to establish that rate via the Norfolk route before the shipments moved. But the reasonableness of the rate via Norfolk is not in issue, although some evidence was introduced on this point, nor are all of the carriers constituting this route made defendants. No evidence was introduced bearing upon the reasonableness of the rate paid over the route of movement, and the record does not contain a sufficient basis to support a finding with respect thereto.

We do not find that the rate via the route of movement was unreasonable, but we do find that the shipments were misrouted by the Philadelphia, Baltimore & Washington Railroad Company; that complainant made the shipments as described, paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the rates paid and those which would have been applicable via Wilmington, viz, 21.1 cents on the shipments made prior to October 1, 1917, and 16.8 cents on the shipments made thereafter; and that complainant is entitled to reparation, with interest, from the Philadelphia, Baltimore & Washington Railroad Company. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

No. 10544.
CHAPIN & COMPANY
v.
DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY
OF NEW JERSEY, ET AL.

Submitted August 30, 1919. Decided April 1, 1920.

Rates on copra-oil meal, in carloads, from Undercliff, N. J., and Port Ivory, Staten Island, N. Y., to Hammond, Ind., found unreasonable. Reparation awarded and measure of reasonable rates prescribed.

John Andrew Ronan and B. F. Grubbs for complainant.

Marion B. Pierce for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the feed business at Chicago, Ill., with mills and elevators at Hammond, Ind. By complaint filed March 31, 1919, it alleges that the rates charged on numerous carloads of copra cake, copra meal, and coconut-oil cake shipped from Undercliff, N. J., and Port Ivory, Staten Island, N. Y., to Hammond during the period from July 16, 1917, to the date of filing the complaint, were, and that the present rates are, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. An award of reparation and the establishment of reasonable rates for the future are asked. Rates will be stated in cents per 100 pounds.

The principal contention of complainant is that the rates charged should not have exceeded the contemporaneous aggregates of intermediate rates, based on Buffalo, Black Rock, or Suspension Bridge, N. Y., applicable on cottonseed meal or cottonseed-oil cake. There is no allegation that the fourth section of the act was or is violated and no application thereunder was heard in connection herewith. No evidence was introduced to support the allegations of unjust discrimination and undue prejudice under sections 2 and 3 other than a general showing that copra meal under certain conditions is sold

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in some markets in competition with cottonseed meal and other commodities accorded the commodity rates on grain products.

At the hearing it developed that no cake moved, and that the shipments consisted of copra meal, sometimes called copra-oil meal. The record deals only with that commodity. Copra is imported from tropical countries, and consists of dried coconut meats. It is then crushed and put through a process to extract the oil. The residue is sometimes sold in cake form, but more often as meal. The latter, like cottonseed meal, is used extensively as a stock feed. Copra meal ordinarily loads 25 per cent heavier than cottonseed meal or cottonseed cake, and complainant's shipments were loaded some 10 per cent above the marked capacity of the cars. The majority of the shipments weighed about 44 tons; some weighed 55 tons. The value in April, 1918, of copra meal and cottonseed-oil cake at points of production was about \$38 and \$50 per ton, respectively. Approximately the same ratio of value applies to-day. Copra meal is shipped in the same manner as cottonseed meal or cake, and under substantially similar conditions of transportation, except that the volume of movement is not so great.

Undercliff is located on the New York, Susquehanna & Western Railroad and Port Ivory on the Staten Island Rapid Transit Railroad. Both are within the lighterage limits of New York harbor. The shipments moved over defendants' lines and charges were collected at the legally applicable joint through sixth-class rates of 30 cents prior to June 25, 1918, and 37.5 cents on and after that date. Copra meal was not specifically named in the official classification governing, but oil cake, oil meal, or meal, n. o. s., in carloads, were rated sixth class.

There were no joint through commodity rates from and to these points on cottonseed meal, cottonseed-oil cake, or grain products. When the first of the shipments moved, defendants Erie Railroad and Central Railroad of New Jersey, hereinafter called the Central, published commodity rates to Buffalo, representative of the Niagara frontier points named, on grain products and kindred commodities, which specifically included corn-oil cake, cottonseed cake, cottonseed-oil cake, linseed-oil cake, oil meal, and cottonseed meal; on May 10, 1919, copra-oil meal and copra-oil cake were added to the list of commodities taking grain-products rates. As the list already included oil meal, the effect of these additions to that list was to make more definite the application of the grain-products rates on copra-oil meal. The only rate to Buffalo via defendant Lehigh Valley Railroad on oil cake, oil meal, and meal, n. o. s., which would include copra-oil meal, cottonseed meal, and cottonseed-oil cake, was the sixth-class rate. Beyond Buffalo, defendants had in

effect, during the first part of the period, a commodity rate on grain products, which included corn-oil cake, cottonseed-oil cake, linseed-oil cake, cottonseed meal, corn-oil meal, and linseed-oil meal; on January 1, 1919, the grain-products basis of rates was made applicable to coconut-oil meal and coconut-oil cake, which would include copra-oil meal and cake, also palm-kernel meal, peanut-oil meal, and soya-bean meal, which latter commodities are also used to some extent for stock feed. The table below gives these rates separately and their aggregates for the period from the date of the first shipment to the present time:

Dates effective.	To Buffalo via—			Buffalo to Hammond.	Aggregates of intermediates to Buffalo via—		
	Erie.	Central.	Lehigh Valley.		Erie.	Central.	Lehigh Valley.
July 16, 1917.....	11.6	11.6	13.8	13.7	25.3	25.3	27.5
Aug. 1, 1917.....			16.0				29.7
Apr. 13, 1918.....	13.5				27.2		
Apr. 18, 1918.....				16.0	29.5	27.6	32.0
May 24, 1918.....		13.5				29.5	
June 25, 1918.....	17.0	17.0	20.0	20.0	37.0	37.0	40.0
Dec. 1, 1919.....			20.5				40.7

Apparently some of the shipments moved after January 1, 1919, at which time the combination rates on Buffalo via the Erie and Central applicable on copra-oil meal made less by one-half cent than the joint through sixth-class basis of rates legally applicable. No authority appears for this departure from the aggregate of the intermediates provision of the fourth section and the rates affected thereby were therefore unlawful.

In *Southport Mill v. Director General*, 55 I. C. C., 154, we found that the rates on copra and palm-kernel products from New Orleans and Baton Rouge, La., to St. Louis, Mo., Chicago, Ill., Brooklyn, N. Y., and various other destinations were unreasonable to the extent that they exceeded the rates contemporaneously applicable on similar products of cotton seed, and awarded reparation.

As to shipments via the Lehigh Valley, Fourth Section Order No. 340, General No. 6, issued October 10, 1911, and still in effect, provided:

That, applying the rule *de minimis*, all carriers be, and they are hereby, authorized, in the making up of through fares or rates on the aggregate of the intermediate fares or rates, to disregard fractions of a cent less than .5, retaining the half cent in the rate when it is even .5, and making the rate in even cents when the fraction is more than .5.

The aggregate of the intermediate rates in effect on cottonseed meal from August 1, 1917, to April 17, 1918, inclusive, on ship-
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ments moving into Buffalo over the Lehigh Valley was 29.7 cents, and the defendants were therefore authorized under the provision quoted to make the joint rate 30 cents. The latter was the rate legally applicable on both cottonseed meal and copra meal.

Upon the record we are of opinion and find that the rates assailed which were in effect prior to August 1, 1917, via the Lehigh Valley, and prior to January 1, 1919, via the Erie and Central, were unjust and unreasonable to the extent that they exceeded the aggregates of intermediate rates contemporaneously in effect on copra-oil meal as well as on cottonseed meal or cottonseed-oil cake, in carloads, to Buffalo, Black Rock, and Suspension Bridge, N. Y., and beyond on cottonseed meal or cottonseed-oil cake; and further that the rates assailed in effect via the Erie and Central on and after January 1, 1919, were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the aggregates of intermediate rates contemporaneously in effect to and from Buffalo, Black Rock, and Suspension Bridge, on copra meal or copra-oil meal, in carloads.

The freight charges in excess of those that accrued at 30 cents per 100 pounds were not borne by the complainant, but were charged to the shipper who is not a party to this proceeding. We further find that the shipments were made as described; that complainant bore the charges thereon on the basis of 30 cents per 100 pounds; that it has been damaged to the extent of the difference between the charges borne by it and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare and submit to defendants for verification a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered for the future.

No. 10680.
LASALLE COUNTY CARBON COAL COMPANY
v.
DIRECTOR GENERAL AND CHICAGO, MILWAUKEE
& ST. PAUL RAILWAY COMPANY.

Submitted October 27, 1919. Decided March 20, 1920.

Charges for passenger-train service found to have been illegally assessed.
Reparation awarded.

Frank Crozier for complainant.
J. N. Davis, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties. No exceptions thereto were filed.

In September, 1918, the complainant, operating a coal mine at Cedar Point, Ill., requested the defendant railroad, hereinafter called the defendant, to change its passenger-train schedule between Oglesby, Ill., and Cedar Point so that miners residing at Oglesby could come to Cedar Point daily, work in complainant's mine, and return to their homes in Oglesby the same evening, as they could not do under the passenger-train schedule then in effect. Defendant agreed to furnish an additional train if complainant would guarantee payment of the published minimum charge therefor of \$75 per round trip. The service was begun on September 23, 1918, by train leaving Oglesby daily at 6.30 a. m. and Cedar Point at 4.14 p. m. Oglesby is 5 miles from Cedar Point and the run was made in about 15 minutes.

The understanding was that all making the trip would be assessed the regular published fares and, if the fares so collected for the round trip did not equal the minimum, complainant would be billed for the balance. On November 1 a statement was rendered by defendant for \$2,187.52 to cover the balance. This was paid by complainant. It now seeks to recover the amount, alleging that the minimum charge was unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, and that the charges were unauthorized under the tariffs.

Complainant offered no evidence of unreasonableness, except that defendant's representative with whom the negotiations were had agreed that he would try to get the guaranty reduced to \$25, and that after November 1 no charge was made against complainant, because the train was then scheduled as a regular part of defendant's passenger service, and as such continued until February, 1919.

Defendant relies upon the following tariff provision:

SPECIAL TRAINS. (a) For movement of a special train one way for the exclusive use of one or more persons between all stations (interstate and intrastate) in Illinois, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, the charge will not be less than the sum of one hundred whole fares for a party of one hundred persons or less, and one additional fare for each person in excess of one hundred. The minimum charge for special train will be \$75.00. For round-trip movement of a special train with passengers, the minimum charge for the round-trip will be one hundred whole round-trip fares, but not less than \$75.00.

But section (b) of the same tariff provision reads as follows:

(b) Extra trains, open to the public, may be scheduled, as circumstances and conditions may justify, to accommodate traffic when found advisable on account of extra volume of travel, or lack of regular service, delay of connecting trains, etc.

Additional charge may be made for empty service in assembling equipment for special train. The location and availability of the equipment and crew and the miles of empty service involved will be considered in determining if special train can be furnished.

Complainant contends that the train furnished for this daily service was not a special train within the terms of this tariff provision, because it was not reserved for the exclusive use of its employees. It appears that the train always ran beyond Cedar Point to Granville, Ill., 4 miles distant, where a mine controlled by defendant was located, and carried miners from Oglesby who rode to Granville and worked in the mine there.

It does not appear whether these miners paid fare or not. The record indicates that the bill rendered complainant represented the daily difference between the minimum of \$75 and the amount collected for the transportation of passengers from Oglesby to Cedar Point and return at the rate of 15 cents in each direction. There was no way of identifying complainant's employees and the train was open to the public.

Upon the record we are of opinion and find that this train was not a special train under (a) but was an extra train under (b) of the tariff provision above quoted; that charges were therefore collected from complainant without proper tariff authority and were illegally assessed; that the complainant was damaged to the extent that the charges paid exceeded those which should have been col-

lected at the rates applicable for regular passenger-train service; and that it is entitled to reparation. Since the aggregate fares paid by all passengers making use of the train does not appear, the exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

No. 10103.

STEINHARDT & KELLY

v.

ERIE RAILROAD COMPANY.

Submitted December 26, 1919. Decided April 6, 1920.

Former finding that arrival notices covering carload shipments of apples at Jersey City, N. J., were, in the light of the surrounding circumstances, in substantial compliance with the requirements of the tariff, and that the demurrage charges assailed legally accrued, affirmed on rehearing. Complaint dismissed. Former report 52 I. C. C., 304.

Leo Oppenheimer and Leo N. Haiblum for complainant.

Marion B. Pierce for defendant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

A proposed report on the rehearing in this case was prepared by the examiner and served upon the parties. Exceptions were filed by the complainant.

Our original report herein appears in 52 I. C. C., 304. The complaint alleged that the demurrage charges on numerous carloads of apples in boxes shipped from various interstate points to New York, N. Y., assessed by defendant for detention at Jersey City, N. J., during September, October, November, and December, 1915, and paid January 26, 1918, were illegal in that the arrival notices did not contain the points of origin of the shipments nor the contents of the cars as specified by the governing tariff. Reparation was asked.

The demurrage charges in controversy were for the detention of shipments at Jersey City in excess of the 10 days' free time allowed by the tariff whose provision with respect to the manner of giving notice to consignee of the arrival of shipments is set forth in our

former report. In that report after an examination of all the facts of record we found that the arrival notices in the light of the surrounding circumstances were in substantial compliance with the tariff, and dismissed the complaint. The grounds for such dismissal appear in the original report and need not be repeated here.

At the rehearing the complainant offered further evidence in support of his contention that the notices were not in substantial compliance with the tariff provision. The principal witness for complainant was one who was not in complainant's employ when this demurrage accrued. His testimony and that of the only other witness on behalf of complainant was almost wholly lacking in particularity with respect to facts relating to the shipments herein. No evidence was adduced upon rehearing which throws material light upon the facts heretofore presented and no new or pertinent definite facts not before the Commission in the original case are developed.

Upon the whole record we are of the opinion and find that the complaint upon rehearing should be dismissed, and it will be so ordered.

EASTMAN, *Commissioner*, dissents.

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ST. LOUIS, TROY & EASTERN RAILROAD COMPANY.
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181¹.

IN THE MATTER OF ALLOWANCES TO SHORT LINES
OF RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted September 29, 1919. Decided April 6, 1920.

1. The St. Louis, Troy & Eastern Railroad Company found to be a common carrier of property subject to the interstate commerce act which may lawfully receive from its trunk line connections compensation out of the through interstate rates to and from points on its line in the form of divisions of joint rates or absorptions of its switching charges under appropriate tariff provision. Such compensation must not be more than is reasonable, and a specific and complete statement of any arrangement now in effect, or of any basis agreed upon, must be filed with this Commission.
2. Complaint in No. 6890 alleging a violation of the commodities clause dismissed.

R. W. Ropiequet for Coal Operators' Traffic Bureau of St. Louis, Mo.; *W. C. Stith, T. M. Pierce, J. L. Howell, Kramer, Kramer & Campbell*, and *E. C. Kramer* for Terminal Railroad Association of St. Louis; *Sidney F. Andrews* for St. Louis & O'Fallon Railway Company; *Philip Barton Warren, Wilson, Warren & Child*, and *F. M. Campbell* for Litchfield & Madison Railway Company; and *W. C. Stith* and *Bruce A. Campbell* for St. Louis Transfer Railway Company, East St. Louis Connecting Railway Company, Wiggins Ferry Company, and Interstate Car Transfer Company.

C. B. Sudborough for Vandalia Railroad Company; *William A. Northcutt* and *John Fitzgerald* for Louisville & Nashville Railroad Company; *E. C. Kramer, Bruce A. Campbell*, and *Fred H. Behring* for Southern Railway Company; *E. C. Kramer, Bruce A. Campbell*,

¹ This report also embraces No. 6890, Coal Operators' Traffic Bureau of St. Louis, Mo., v. Terminal Railroad Association of St. Louis et al.

and *Edward Hart, jr.*, for Baltimore & Ohio Southwestern Railroad Company; and *Henry G. Herbel* and *C. C. P. Rausch* for Missouri Pacific Railroad Company and St. Louis, Iron Mountain & Southern Railway Company.

T. R. Farrell for Wabash Railway Company; *W. W. Miller* and *C. S. Burg* for Missouri, Kansas & Texas Railroad Company; *N. S. Brown* and *J. L. Minnis* for central freight association lines; *W. C. Stith* for St. Louis Merchants Bridge Terminal Railway; and *Benjamin Schnurmacher*, *Charles Conradis*, *Arthur B. Hayes*, *L. O. Whitnel*, and *W. C. Johnston* for St. Louis, Troy & Eastern Railroad Company.

R. B. Scott and *W. A. Halley* for Chicago, Burlington & Quincy Railroad Company; *W. K. Vandiver* for Mobile & Ohio Railroad Company; *F. H. Low*, *C. C. Cameron*, and *R. V. Fletcher* for Illinois Central Railroad Company; *G. H. Kummer* for Chicago & Eastern Illinois Railroad Company; and *J. R. Cavanagh* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The record now before us presents for determination (1) whether or not the St. Louis, Troy & Eastern Railroad Company, hereinafter called the Troy, is a common carrier subject to the interstate commerce act, which may lawfully receive from its trunk line connections compensation out of the through interstate rates to and from points on its line in the form of divisions of joint rates, or absorptions of its switching charges under appropriate tariff provision; and (2), in No. 6890, whether payment to the Troy, the St. Louis & O'Fallon Railway Company, and the Litchfield & Madison Railway Company, by the trunk lines, of divisions of joint rates on interstate shipments of coal violates the commodities clause of the interstate commerce act, because of the fact that the roads named and coal mines served by them are owned by the same interests, thereby resulting in unjust discrimination and undue prejudice to the complainants. Since the original date of submission additional information has been obtained in response to a questionnaire mailed to the parties in No. 4181 and Investigation and Suspension Docket No. 414 on May 29, 1919, which has been made a part of the record, with the consent of the Troy and the following trunk line connections: Cleveland, Cincinnati, Chicago & St. Louis Railway; Illinois Central Railroad; Pittsburgh, Cincinnati, Chicago & St. Louis Railway; Southern Railway; Toledo, St. Louis & Western Railroad; Wabash Railway; and Terminal Railroad Association of St. Louis.

The Troy was incorporated August 16, 1899, with a capital stock of \$350,000, which was later increased to \$850,000, the additional \$500,000 being a stock dividend declared out of the earnings of the road. The funded debt unmaturred was \$615,000 on December 31, 1918. Its bondholders are scattered throughout the country. As pointed out in *Coal and Oil Investigation*, 31 I. C. C., 193, at page 213, as well as of record herein, the Merchants' & Manufacturers' Investment Company, hereinafter termed the investment company, owns the shares of capital stock of the Troy, and also of Donk Brothers Coal & Coke Company, hereinafter called the coal company, which owns and operates three mines located on the Troy at Donkville, Maryville, and Troy, and also a wholesale and retail business in St. Louis. The president, secretary and treasurer, general freight agent, and assistant secretary of the Troy are also employed by and receive one-half of their compensation from the coal company.

The Troy is located entirely in Illinois and extends from East St. Louis to Troy, with a branch line from a point beyond Formosa Junction to Edwardsville Junction, which intersects the main line at Troy Junction. It operates 25.91 miles of main track, of which it owns 18.91 and leases 7, and 17.99 miles of spurs and sidings, of which it owns 15.93 and leases 2.06. The St. Louis & Illinois Belt Railway owns 7 miles of the leased tracks and receives from the Troy a rental of \$3,500 per mile per annum. The St. Louis & Illinois Belt is also owned by the investment company. The tracks of the Troy are in such condition that the trunk lines could operate over them. It owns 5 locomotives, 994 freight cars, and 4 company-service cars. Its freight cars are interchanged with the trunk lines. There are 12 stations on its line, 5 of which are agency stations. All its property is said to be devoted to the public service. On December 31, 1918, the book value of the property was \$1,588,510.02, which it is stated represented the original cost. Accrued depreciation amounted to \$284,107.75.

In 1918 the Troy's interchange service included 14,807 cars in interstate commerce and 14,009 cars in intrastate commerce for the coal company for an average distance of 10 miles from and to the trunk lines, and for independent shippers using team tracks or freight stations 402 cars, for an average distance of 11 miles from and to the trunk lines, of which 106 moved interstate. It furnished the names of some 59 shippers, chiefly farmers and merchants, who use its line. The service performed for the coal company is similar to that performed for the independent shippers, and to that performed by the trunk lines for other shippers in the same rate territory. The Troy participated in the movement of 7,535 cars as an intermediate carrier. Its less-than-carload traffic amounted to 993

tons. More than 90 per cent of the tonnage handled is furnished by the coal company. No passengers, mail, or express were transported. Bills of lading and waybills are issued in the usual manner; and annual reports and tariffs are filed with us.

The record fails to disclose the amount of the divisions received from the trunk lines at the present time. Charges for local switching ranged from \$1.50 to \$6 per car prior to March 15, 1920; since that date they have ranged from \$2.50 to \$5. Class rates apply on less-than-carload traffic. No attempt is made to allocate the expenses between the various classes of services and the cost of service is not shown.

The Troy is an associate member of the American Railroad Association; receives per diem reclaims, aggregating \$700 in 1918; and settles with the trunk lines for detention or use of cars according to the rules of the association, receiving \$84,145.01 and paying \$67,190.61 in 1918. Demurrage is collected by the Troy under its published tariffs. The coal company operates under an average-demurrage agreement.

We find that the Troy is a common carrier of property subject to the interstate commerce act which may lawfully receive compensation from its trunk line connections out of the through interstate rates to and from points on its line in the form of divisions of joint rates or absorptions of its switching charges under appropriate tariff provision. The present record does not afford a basis for fixing the amounts which may properly be paid, but the divisions or absorptions must not be more than reasonable, and a specific and complete statement of the arrangement now in effect, or of any other basis that may be agreed upon, must be filed with this Commission.

The complaint in No. 6890 turns upon the question of whether or not the commodities clause is violated. The determination of this question as here presented does not in our judgment come within our administrative functions, and is more appropriately a matter for the courts. This complaint will be dismissed.

An appropriate order will be entered in No. 6890. No order is necessary in No. 4181 and Investigation and Suspension Docket No. 414.

No. 5917.
G. B. MARKLE COMPANY ET AL.
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted June 17, 1916. Decided April 6, 1920.

On further hearing reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal, prepared and pea sizes, in carloads, from certain collieries in the Lehigh coal region of Pennsylvania to Perth Amboy, N. J., for transshipment by water. Former report 37 I. C. C., 441.

Robert D. Jenks and William A. Glasgow, jr., for complainants and interveners.

E. H. Boles and Stewart C. Pratt for defendant.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION: -

In their complaint, filed July 2, 1913, the complainants, G. B. Markle Company, Pardee Brothers & Company, Incorporated, and Weston Dodson & Company, Incorporated, corporations, alleged among other things that the rates charged them by the defendant for the transportation of their shipments of anthracite coal, in carloads, from various collieries on defendant's line in the Lehigh anthracite coal region of Pennsylvania to tidewater at Perth Amboy, N. J., for transshipment by water, were unreasonable and unduly prejudicial. They asked reparation "for the unjust and unreasonable rates heretofore and hereafter charged." Subsequently the partners composing the firm of Charles M. Dodson & Company petitioned for permission to intervene, stating that they were the owners of the Beaver Brook colliery, named in the complaint, and that they sold the output therefrom through Weston Dodson & Company, one of the complainants, as their selling agent. They asked permission "to adopt the complaint * * * with the same effect as if it [they] had originally joined therein." An order permitting intervention was granted on March 20, 1914. In disposing of the issues originally raised we pointed out in our former report, 37 I. C. C., 441, that "just and reasonable rates governing such traffic from the 57 I. C. C.

coal region affected had been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220," hereinafter called the *Anthracite Case*. The question of reparation was withheld for further hearing, and presents the only issue remaining undetermined. Rates are stated in amounts per ton of 2,240 pounds.

The complainants' and interveners' collieries are located on the Mahanoy and Hazleton division of the defendant's line at an average distance from Perth Amboy of 131 miles. All the shipments moved over the line of the defendant and charges were collected thereon at the following, then applicable, rates: prepared sizes, \$1.55; pea, \$1.40; buckwheat, \$1.20; rice, barley, and culm, \$1.10. In the *Anthracite Case* we found these rates unreasonable to the extent that the rates on prepared sizes exceeded \$1.40 and on pea and smaller sizes \$1.30, which rates, as prescribed by us, became effective on April 1, 1916.

At the further hearing on April 28, 1916, complainants and interveners submitted detailed statements of the shipments made by them during the period from July 3, 1911, to March 31, 1916, inclusive. These exhibits have been checked by the defendant, and the parties are in accord as to the amount of reparation claimed on shipments of prepared and pea sizes. As the rates on buckwheat, rice, barley, and culm coal were not found to be unreasonable in the *Anthracite Case*, and as there is no further evidence that the rates charged thereon were unreasonable or unduly prejudicial, the claim of G. B. Markle Company for reparation with respect to shipments of these smaller sizes is denied. No objection was raised by the defendant to the inclusion of shipments which moved subsequently to the filing of the complaint, and we are of opinion that the filing of a supplemental complaint covering such shipments was unnecessary. The complaint alleged both a past and continuing violation of the act on the part of the defendant in demanding and collecting the rates complained of, for which violation reparation was asked on shipments thereafter moving on such rates. Thus the defendant was fully advised by the complaint and the proceedings had thereunder of complainants' and interveners' claims for reparation on such shipments. *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C., 699.

With respect to the claims of interveners, Charles M. Dodson & Company, counsel for the defendant contends that the two-year statutory period should be computed from the date on which the intervening petition was granted and not from the date of filing the complaint. An official of Weston Dodson & Company, a witness for interveners, testified that that company was the selling agent for the interveners' colliery, that all the shipments covered by interveners' claims were sold by it as such agent at prices f. o. b. vessel, and that

in every instance freight charges and commissions were deducted from the selling price before the balance was remitted to the interveners. No claim was submitted by Weston Dodson & Company in its own behalf. It thus appears that Weston Dodson & Company in joining in the prayer for reparation contained in the complaint was acting as agent for its principals, Charles M. Dodson & Company, whose subsequent intervention was merely confirmatory of its agent's act.

In proof of the unreasonableness of the rates assailed complainants submitted, in addition to other evidence, various comparisons showing that the transportation conditions which surrounded the movement of their traffic were, if anything, more favorable than those which applied to the transportation of similar shipments considered in *Meeker & Co. v. Lehigh Valley R. R. Co.*, 21 I. C. C., 129, decided June 8, 1911, and *Marian Coal Co. v. D., L. & W. R. R. Co.*, 24 I. C. C., 140, decided June 8, 1912. Also, at the further hearing complainants' counsel called attention to our findings in the *Anthracite Case* relating to the cost of service, the earnings on the rates then in effect, the financial history of the carriers, including the defendant, and the circumstances which surrounded the transportation. Counsel for the defendant contend that we can not take into consideration any of the facts found by us in the *Anthracite Case*, citing *United States v. B. & O. Southwestern Ry.*, 226 U. S., 14. This contention is contrary to the position taken by them prior to our decision in that case. At the original hearing defendant's counsel objected to the introduction of any evidence relating to the reasonableness of the rates attacked because these rates were then under consideration in the *Anthracite Case*; and again on brief urged:

* * * that the Commission can not with propriety consider the reasonableness of the Lehigh Region rate from the record in this case, but must do so only upon a full consideration of the record in its general investigation, Docket 4914.

Thus by request of counsel for both complainants and defendant our findings of fact in the *Anthracite Case*, where relevant, are submitted for our consideration in passing upon the reasonableness of the rates in issue. Moreover, the defendant was a party to both the *Meeker Case*, *supra*, and the general investigation in the *Anthracite Case*. It was represented by counsel, was apprised of all the evidence submitted in those cases, and was accorded the opportunity to cross-examine witnesses and submit evidence on its own behalf. A similar objection was overruled by us in *Plymouth Coal Co. v. P. R. R. Co.*, *supra*, and that course is taken here.

In the *Meeker Case*, *supra*, we found that this defendant's rates of \$1.55 on prepared sizes, \$1.40 on pea size, and \$1.20 on buckwheat
57 I. C. C.

coal from the Stevens colliery in the contiguous but more distant Wyoming region to Perth Amboy, were unreasonable, and prescribed rates of \$1.40, \$1.30, and \$1.15, respectively. The distance from Stevens colliery therein involved to Perth Amboy is 165 miles, over the same tracks for 113.7 miles as those over which complainant's shipments moved. In complying with our order in the *Meeker Case*, defendants confined the reductions to rates from the Wyoming region instead of maintaining parity in the rates from the Lehigh and Schuylkill regions, a fact commented on by us at page 146 of our report in the *Marian Case, supra*, and upon the expiration of our order in that case endeavored to restore the rates formerly in effect from the Wyoming region. These proposed increased rates were suspended and never became effective because of our decision in the *Anthracite Case*. Moreover, after June 1, 1913, the defendant discontinued its practice of allowing free storage at Perth Amboy, and thereby lessened the service rendered. *Plymouth Coal Co. v. L. V. R. R. Co.*, 36 I. C. C., 140. The defendant was thus fully aware of the risk it took in continuing to charge the rates here attacked for the shorter transportation service.

Upon consideration of all the facts of record we are of opinion and find that the rates charged by the defendant during the period from July 3, 1911, to March 31, 1916, inclusive, for the transportation of anthracite coal, in carloads, from the collieries on its line here under consideration, in the Lehigh region of Pennsylvania to Perth Amboy for transshipment by water, were unreasonable to the extent that they exceeded rates of \$1.40 per long ton on prepared sizes and \$1.30 per long ton on pea size, which rates we find would have been reasonable.

We find further that G. B. Markle Company, a corporation, during the period from July 3, 1911, to March 31, 1916, inclusive, made certain carload shipments of anthracite coal of prepared and pea sizes via the defendant, Lehigh Valley Railroad, from four collieries on defendant's line in the Lehigh anthracite region of Pennsylvania known as Jeddo No. 4, Jeddo No. 7, Highland No. 2, and Highland No. 5 to Perth Amboy for transshipment by water; that such shipments aggregated 657,594.10 long tons, prepared sizes, and 25,615.10 long tons, pea size; that complainant G. B. Markle Company ultimately paid and bore thereon the established tariff rates of \$1.55 on prepared sizes and \$1.40 on pea size; that said rates so paid were excessive and unreasonable to the extent that they exceeded \$1.40 on prepared sizes and \$1.30 on pea size, which latter would have been reasonable rates for the service; that complainant G. B. Markle Company has been damaged by the payment of said unreasonable rates to the extent of the difference between the

amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable; and that said damages amount to the sum of \$101,200.60, as principal, and the sum of \$13,538.91 as interest at 6 per cent per annum from the date of payment of the charge on each shipment to April 1, 1916, together with interest on the said principal sum of \$101,200.60 from April 1, 1916, to the date of payment.

We find further that during the period from July 3, 1911, to March 31, 1916, inclusive, complainant Pardee Brothers & Company, Incorporated, a corporation, made certain carload shipments of anthracite coal of prepared and pea sizes via the Lehigh Valley Railroad from three collieries on defendant's line in the Lehigh anthracite region of Pennsylvania, known as Lattimer No. 3, Lattimer No. 4, and Lattimer No. 5, to Perth Amboy for transshipment by water; that such shipments aggregated 192,251.02 long tons, prepared sizes, and 3,126.06 long tons, pea size; that complainant Pardee Brothers & Company, Incorporated, paid and bore thereon the established tariff rates of \$1.55 on prepared sizes and \$1.40 on pea size; that said rates so paid were excessive and unreasonable to the extent that they exceeded \$1.40 on prepared sizes and \$1.30 on pea size, which latter would have been reasonable rates for the service; that complainant Pardee Brothers & Company, Incorporated, has been damaged by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount it would have paid at the rates herein found reasonable; and that said damages amount to the sum of \$30,164.30 as principal, and the sum of \$3,399.79 as interest at 6 per cent per annum from the date of payment of the charges on each shipment to April 1, 1916, together with interest on the said principal sum of \$30,164.30 from April 1, 1916, to the date of payment.

We further find that during the period between July 3, 1911, to March 31, 1916, inclusive, the interveners, Charles M. Dodson, the estate of Weston Dodson, deceased, the estate of T. M. Dodson, deceased, the estate of Samuel Adams, deceased, Frank C. Stout, E. L. Bullock, and A. S. Schopp, copartners doing business as Charles M. Dodson & Company, made certain carload shipments of anthracite coal of prepared and pea sizes from Beaver Brook colliery on defendant's line in the Lehigh region of Pennsylvania, via the Lehigh Valley Railroad to Perth Amboy, N. J., for transshipment by water; that such shipments aggregated 214,346.47 long tons, prepared sizes, and 3,573 long tons, pea size; that said interveners Charles M. Dodson & Company ultimately paid and bore thereon the established tariff rates of \$1.55 on prepared sizes and \$1.40 on pea size; that said rates so paid were excessive and unreasonable to the ex-

tent that they exceeded \$1.40 on prepared sizes and \$1.30 on pea size. which latter would have been reasonable rates for the service; that interveners have been damaged by the payment of said unreasonable rates to the extent of the difference between the amount paid at the rates herein found unreasonable and the amount they would have paid at the rates herein found reasonable; and that said damages amount to the sum of \$32,509.77 as principal, and the sum of \$3,596.39 as interest at 6 per cent per annum from the date of payment of the charges on each shipment to April 1, 1916, together with interest on the said principal sum of \$32,509.77 from April 1, 1916, to the date of payment.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

For reasons stated in my expression appended to the report in *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C., 699, at 709, I concur in the foregoing report.

57 I. C. C.

No. 6770.

WESTON DODSON & COMPANY, INCORPORATED, ET AL.

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted July 1, 1916. Decided April 6, 1920.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal in carloads from Beaver Brook and Coleraine collieries, in the Lehigh anthracite coal region of Pennsylvania, to Elizabethport, N. J., for transshipment by water. Former report in 38 I. C. C., 206, corrected and order therein vacated.

Robert D. Jenks and William A. Glasgow, jr. for complainants.

Jackson F. Reynolds and Charles E. Miller for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Our original report, decided March 1, 1916, appears in 38 I. C. C., 206. We found therein that the carload rates, hereinafter stated in amounts per long ton of 2,240 pounds, collected by defendant during the period from May 31, 1912, to July 31, 1914, inclusive, for the transportation of complainants' shipments of anthracite coal in prepared and pea sizes, from the Beaver Brook and Coleraine collieries in the Lehigh anthracite coal region of Pennsylvania to Elizabethport, N. J., for transshipment by water were unreasonable. The rates so found unreasonable were \$1.55 for prepared sizes and \$1.40 for pea size. Reparation was awarded in the amount of the difference between the rates charged and those found reasonable. Through error we stated the rates found reasonable as \$1.45 for prepared sizes and \$1.35 for pea and smaller sizes. The latter were local rates from the Pennsylvania anthracite region to Elizabethport, which by supplemental order in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Case*, we had permitted defendant to establish. The reshipping rates to Elizabethport prescribed in that case, and to basis of which we intended to award reparation, were \$1.40 and \$1.30, respectively. Due to this error reparation was awarded to Charles M. Dodson & Company,

hereinafter called the partnership, in the sum of \$4,790.18, and to Weston Dodson & Company, hereinafter called the corporation, in the sum of \$22.81, whereas the correct amounts of reparation were \$7,213.24 and \$34.22, respectively.

Following our report complainants filed two petitions. In one of these they pointed out the errors above noted and asked that the order awarding reparation be corrected. In the other reparation was asked on shipments which moved subsequent to July 31, 1914. Accordingly, on April 10, 1916, we reopened the case for further hearing respecting these subsequent shipments, and on May 1, 1916, directed defendant to show cause by brief to be filed on or before July 1, 1916, why our previous order should not be corrected.

At the subsequent hearing exhibits were submitted covering shipments made by the partnership from the Beaver Brook colliery to Elizabethport for reshipment by water during the period from August 1, 1914, to April 1, 1916, on which date the rates prescribed by us in the *Anthracite Case* became effective. These shipments aggregated 60,754.07 long tons of prepared sizes and 2,408.18 long tons of pea size, and charges were collected thereon in the amount of \$97,541.74 at the applicable rates of \$1.55 and \$1.40, respectively. This exhibit has been checked by the defendant and found to be correct. Defendant's counsel, however, objected to the admission of this exhibit, asserting that "the Commission has no jurisdiction to award reparation on shipments made after the institution of this proceeding." Upon brief they contended that these complainants had not proved they were damaged by merely showing that they made shipments and paid charges at rates which were subsequently ordered reduced.

The complainants' petition for reparation on shipments which moved subsequent to July 31, 1914, contained specifically and by reference to the original complaint all the allegations necessary to apprise the defendant of the issue it was called upon to meet. There was thus a substantial compliance with the provisions of the act respecting complaints for the recovery of damages. Defendant's second contention ignores the fact that after the case was reopened the evidence submitted at the prior hearing was properly to be considered in connection with the evidence subsequently introduced. This evidence had been found sufficient by us to establish the unreasonableness of the rates charged on previous shipments. It was unnecessary, therefore, for the complainants to do more than submit evidence of the movement of subsequent shipments of a similar nature at the rates so held unreasonable. This was done and has not been overcome by any showing on the part of the defendant that changed circumstances and conditions warranted a different finding.

Although defendant did not avail itself of the opportunity afforded for filing a brief in opposition to a correction of our former report, its counsel at the hearing held in connection with our order of April 10, 1916, entered an objection to our power to correct an error in our report or order except upon a formal application for a rehearing. This objection is not well taken. *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, 685.

Upon the facts of record we are of opinion and find that the rates charged by defendant from May 31, 1912, to April 1, 1916, for the transportation of complainants' shipments of anthracite coal in carloads from Beaver Brook and Coleraine collieries to Elizabethport, for transshipment by water were unreasonable to the extent that they exceeded rates of \$1.40 per long ton on prepared sizes and \$1.30 per long ton on pea size; which rates we find would have been reasonable for this service.

We further find that during the period from May 31, 1912, to July 31, 1914, inclusive, complainants Charles M. Dodson & Company, a partnership composed of Charles M. Dodson, the estate of Weston Dodson, deceased, the estate of T. M. Dodson, deceased, the estate of Samuel Adams, deceased, Frank C. Stout, E. L. Bullock, and A. S. Schopp, made certain carload shipments of anthracite coal over defendant's line from Beaver Brook colliery to Elizabethport, for transshipment by water; that said shipments aggregated 47,342.27 long tons of prepared sizes and 1,119.01 long tons of pea size; that the partnership paid and bore charges thereon at rates of \$1.55 and \$1.40, respectively; that the rates paid were unreasonable to the extent that they exceeded \$1.40 on prepared sizes and \$1.30 on pea size; that the partnership has been damaged to the extent of the difference between the charges paid and those collectible at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$7,213.24, with interest.

We further find that during the period from August 1, 1914, to April 1, 1916, the partnership made certain carload shipments of anthracite coal over defendant's line from Beaver Brook colliery to Elizabethport, for transshipment by water; that these shipments aggregated 60,754.07 long tons of prepared sizes and 2,408.18 long tons of pea size; that this complainant paid and bore the charges amounting to \$97,541.74 at rates of \$1.55 and \$1.40, respectively, which rates we have found unreasonable; that charges amounting to \$88,187.70 would have accrued at the rates herein found reasonable; that the partnership has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates found reasonable; and that the partnership is entitled to reparation in the sum of \$9,354.04, with interest.

We further find that during the period from January 20 to January 31, 1913, inclusive, complainant Weston Dodson & Company, a corporation, made certain carload shipments of anthracite coal over defendant's line from Coleraine colliery to Elizabethport, for transshipment by water; that these shipments aggregated 228.14 long tons of prepared sizes upon which this complainant paid and bore charges at the applicable rate of \$1.55; that this rate was unreasonable to the extent that it exceeded \$1.40; that this complainant was damaged to the extent of the difference between the amount paid and the amount which would have accrued at the rate found reasonable, and that the damages amount to \$34.22 and interest.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

For reasons stated in my separate expression in *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C., 699, at 709, I concur in the foregoing report.

57 I. C. C.

No. 10967.

NORTHERN POTATO TRAFFIC ASSOCIATION

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted March 8, 1920. Decided April 1, 1920.

Minima applicable to potatoes, in carloads, from points in Minnesota to points in official classification territory not shown to be unreasonable or to have resulted in unreasonable charges on shipments from and to those points. Minima applicable to this traffic from Isanti, Minn., to Albia, Iowa, found to have been and to be unreasonable to the extent indicated in the report and to have resulted in unreasonable charges on one shipment. Reparation awarded and a reasonable rule prescribed.

O. W. Tong for complainant.*John F. Finerty* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

EASTMAN, Commissioner:

The issues here presented were made the subject of a proposed report by the examiner who heard the evidence. No exceptions were filed thereto.

Complainant, a voluntary association of potato shippers, asks reparation on behalf of certain of its members. The complaint, which was seasonably filed, alleges that unreasonable charges were collected on four carloads of potatoes, in sacks, due to the fact that the cars in which the shipments were loaded would not contain the applicable minimum weights. Relief for the future is also sought.

The following table shows the details of the shipments upon which reparation is desired:

From—	To—	Date.	Car initial and number.	Outside length of car.	Capacity of car.	Minimum weight charged for.	Actual weight stated by shipper. ¹
Isanti, Minn.....	Albia, Iowa.....	1918 Mar. 18	GN 250003.	<i>Ft. In.</i> 33 7	<i>Cu. ft.</i> 1,390	<i>Pounds.</i> 36,000	<i>Pounds.</i> 30,000
Cameron, Wis.....	Pittsburgh, Pa.....	Dec. 4	ART 8690.	38 ..	1,924	36,000	34,500
Lewis, Wis.....	.....do.....	1919 Jan. 8	Boo 11039..	36 10	1,635	36,000	32,400
Center City, Minn.....	Terre Haute, Ind..	Feb. 10	PL 614912.	36 4	1,643	36,000	30,000

¹ Ascertained by multiplying the number of sacks per car by 150 pounds, the weight per sack of 2½ bushels.

The car first listed is a so-called beer car without ice bunkers; the others are refrigerator or produce cars, equipped with noncollapsible ice bunkers. The first was shipped under option No. 1, shipper's protective service against cold; the other three under option No. 2, carriers' protective service. In connection with the first shipment the following minimum-weight provision, contained in Boyd's tariff I. C. C. No. A-715, was applicable:

Shipments moving under the rates named in this tariff will be subject to minimum weight charges as shown below, viz:

	Pounds.
From October 1 to May 31.....	†36,000
From June 1 to September 30.....	†30,000

† Minimum weight will be 30,000 pounds on shipments in cars under 31 feet in length, inside measurement, or in cars 36 feet and under, outside measurement, when equipped with noncollapsible end ice bunkers.

‡ 24,000 pounds will apply on intrastate shipments in Wisconsin.

The following, contained in Boyd's tariff I. C. C. No. A-702, and reissues, published pursuant to *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 48 I. C. C., 303, applied to the remaining shipments:

Shipments of potatoes, in straight carloads, moving under the rates named in this tariff will be subject to minimum weights as shown below, viz:

	Pounds.
From October 1 to April 30, inclusive, except as provided in note below.....	36,000
From May 1 to September 30, inclusive.....	30,000

NOTE.—Minimum weight will be 30,000 pounds on shipments in cars of less than 1,615 cubic feet capacity.

It was testified for complainant that all of these cars were loaded with the maximum quantity of potatoes that could be safely carried therein, but none of complainant's witnesses saw the cars loaded. One testified that GN 250003 would not contain 36,000 pounds and that if a space for heaters were left between the doors it would not contain in excess of 186 sacks, or 27,900 pounds. This estimate was based on the available space after the installation of the necessary linings, etc., and the fact that shortly before the hearing the witness had personal experience with a similar car of the same series, in which he found it possible to load 200 sacks, or 30,000 pounds of potatoes, only by removing the heaters from between the doors and placing 14 sacks in that space. The testimony as to the three other cars was based on statements made to the witnesses by the loaders, who were not present at the hearing, and on notations on copies of the bills of lading in evidence indicating that the cars were "loaded full." The witnesses had no personal knowledge of the circumstances under which these notations were made.

The defendants concede that by reason of its small cubic capacity GN 250003 would not contain 36,000 pounds of potatoes, but contend that the other cars could have been loaded to the minimum.

In support of this contention, they referred to actual shipments in a number of similar cars, subject to the same minimum, which were loaded to that weight, or in excess thereof. Two of their witnesses testified that ART 8804, which is of the same series and size as ART 8690, was loaded at Chetek, Wis., on December 30, 1919, with 240 sacks of potatoes, or 36,000 pounds. An affidavit of the three men who actually loaded that car is to the same effect. Photographs of the lading do not appear to substantiate the testimony of these witnesses as to the exact manner in which the potatoes were placed in the car. One of defendants' witnesses, a potato loader of long experience in this territory, testified that in his opinion it was loaded so as to carry safely in cold weather, while one of complainant's witnesses, also an experienced potato loader, was of the contrary opinion.

Complainant apparently concedes that potatoes can generally be loaded to the applicable minima, but contends that occasionally cars will not contain these weights by reason of their small cubic capacity or the fact that they are in bad condition and require extra linings and unusual precautions in the manner of loading for protection against low temperatures. It introduced in evidence a copy of Markets Document No. 17, issued in October, 1918, by the United States Department of Agriculture, making detailed recommendations as to the proper method of preparing cars and loading potatoes for protection against cold, and describing the methods generally followed in loading potatoes in this territory. It appears, however, that shippers sometimes deviate from these methods because of variations in temperature and in the conditions of cars. In view of these variations, especially in the condition of cars furnished, complainant contends that a comparison of the loads in different cars is of little value because, even though two cars may be alike in construction, after they have been in service for a time one may be in better condition and capable of carrying safely a much larger load than the other. Complainant admits that shippers are at liberty to refuse to accept cars which in their opinion will not safely carry the prescribed minima, but asserts that by reason of the acute car shortages which recur regularly during the potato-shipping season and the attendant difficulty and delay in obtaining cars, shippers are, as a practical matter, forced to accept any equipment in which potatoes may possibly be transported. The existence of this situation was recognized in *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, 42 I. C. C., 545 and *Northern Potato Traffic Asso. v. C. & N. W. Ry. Co.*, 53 I. C. C., 100.

Complainant suggests that adequate relief would be afforded its members if we should prescribe, in addition to the existing minimum

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provisions, that actual weight will govern where the weight of the maximum quantity of potatoes which can be loaded and carried safely in a particular car is less than the tariff minimum, thus taking into consideration the necessity for lining cars, loading the potatoes so they will not shift in transit, and allowing sufficient space for heaters and for the circulation of air above, below, and around the load. In support of this suggestion, reference is made to rules 66 of Tariff Circular 18-A and 24 of consolidated freight classification No. 1. Nothing in rule 66 warrants such a provision, and rule 24 specifically provides that it will not apply to freight that requires and is loaded in either heated, refrigerator, insulated, ventilator, or tank cars or cars especially prepared either by the carrier or shipper.

The defendants strongly object to the suggested requirement. They contend that while a provision for the assessment of charges based on actual weight of shipments loaded to the full visible capacity of the car is proper where it may be determined by casual inspection whether or not the car is fully loaded, it would be highly improper in connection with potato shipments, for the reason that whether or not a particular car is properly prepared and loaded with the maximum quantity of potatoes which will carry safely is a question affected by the varying conditions which surround each individual shipment and upon which opinions differ, as is indicated by the testimony in this case. They claim that to leave the interpretation of such a provision to their various local agents would result in confusion and would open the door to unlimited discriminations and preferences.

These objections to complainant's suggestion we think are valid. The facts in this case are not essentially different from those adduced in *Northern Potato Traffic Asso. v. B. & O. R. R. Co.*, *supra*. In our first report therein we prescribed from points in the state of Minnesota to points in official classification territory east of the Indiana-Illinois state line a minimum not in excess of 30,000 pounds on potatoes in cars under 31 feet in length, inside measurement, or in cars 36 feet and under, outside measurement, when equipped with noncollapsible end ice bunkers. This finding was modified in our second report, in which it was held that the defendants had justified for all cars of not less than 1,615 cubic feet capacity a minimum of 36,000 pounds during the months October to April, inclusive, but that the minimum for all cars should be 30,000 pounds during the months May to September, inclusive. The charges on three of the shipments in issue were subject, as previously stated, to the minimum rule published in accordance with these findings, and we are unable to find upon the facts of record either that the minima or the transportation charges applicable to these shipments were unreasonable.

On the shipment from Isanti to Albia, which moved over the Great Northern and the Minneapolis & St. Louis, transportation charges in the sum of \$68.40 were collected at the applicable rate of 19 cents per 100 pounds and minimum of 36,000 pounds. This minimum, fixed with relation to the length of the car, is conceded by the defendants to be in excess of the weight that can be loaded into that and other cars of the same series, of which there are 50, owned by the Great Northern. They stated that they would have no objection to the establishment of a minimum-carload provision to points in western trunk line territory based on cubic capacity, the same as applies to points in official classification territory.

We are of opinion and find that the carload-minimum provisions applicable from Isanti, Minn., to Albia, Iowa, were and are unreasonable to the extent that they did not and do not provide for the application of a 30,000-pound minimum on potatoes in cars the capacity of which is less than 1,615 cubic feet. The establishment of such a provision for the future will be ordered. We further find that the charges collected on the shipment from Isanti to Albia were unreasonable to the extent that they exceeded those that would have accrued at a rate of 19 cents per 100 pounds, minimum 30,000 pounds, which rate and minimum would have been applicable to this shipment had the provision herein found reasonable been in effect; that W. B. Northrup & Company, a corporation, member of the complainant association, made the said shipment and paid and bore the charges thereon; that it has been damaged to the extent that the transportation charges paid exceeded those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation from Walker D. Hines, Director General of Railroads, as Agent, in the sum of \$11.40, with interest. A car rental charge of \$5 was assessed on each of the shipments to Pittsburgh which the defendants admit was in error and not authorized by the tariff. These charges should be promptly refunded, with interest.

An appropriate order will be entered.

No. 10335.

GALVESTON COMMERCIAL ASSOCIATION ET AL.
v.
DIRECTOR GENERAL, ARKANSAS WESTERN RAILWAY
COMPANY, ET AL.

Submitted October 16, 1919. Decided April 6, 1920.

1. Rates applicable to the transportation of iron and steel articles, in straight or mixed carloads, from Galveston and Houston, Tex., to destinations on the lines of defendants in Oklahoma, found unreasonable and unduly prejudicial as compared with rates applicable to the merchant mixture, so called, from St. Louis, Mo., to Oklahoma points for similar distances.
2. Rates on iron and steel articles, in straight or mixed carloads, from Galveston and Houston to that portion of Louisiana west of the Mississippi River, excluding Shreveport and points taking the same rates under decision in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, found unreasonable and unduly prejudicial as compared with rates from St. Louis to said Louisiana points to the extent that they exceed or may exceed 60 per cent of the fifth-class rates prescribed in the above case for similar distances increased by not more than 25 per cent.

E. H. Thornton, J. McA. Sample, and F. A. Lallier for complainants.

F. A. Leffingwell for Chamber of Commerce, Houston, Tex., intervener.

Baker, Botts, Parker & Garwood and Gentry Waldo for defendants.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This case was the subject of a proposed report to which exceptions were filed by defendants. The report has been revised and the conclusions materially changed.

The Houston Chamber of Commerce intervened and requested that Houston, Tex., be accorded the same relief as Galveston, Tex. Houston and Galveston are in the same rate group, and throughout this report wherever Galveston is mentioned, in regard to the general rate situation, it is understood that Houston is also meant.

Iron and steel articles, in straight or mixed carloads, are rated fifth class in western classification. The rates applicable under that class apply to certain described articles of iron and steel from Gal-

veston to points of destination in the state of Oklahoma and to that part of the state of Louisiana west of the Mississippi River, except that commodity rates, as prescribed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, hereinafter called the *Shreveport Case*, apply between Galveston and Shreveport, La., and points taking the same rates. We there prescribed on iron and steel articles, carload minimum 30,000 pounds, the following:

Rates to or from points in interstate common-point territory in Texas for single-line application, 60 per cent of fifth-class rates, subject to a maximum of 32 cents per 100 pounds; for joint-line application, may exceed those here named for single-line application by 2 cents per 100 pounds, subject to the same maximum. Rates to or from points in interstate differential territory in Texas may exceed said maximum by 60 per cent of the fifth-class differentials hereinabove prescribed.

Complainants allege that the current fifth-class rates for the transportation of iron and steel articles from Galveston to the destination territory described are unreasonable to the extent that they exceed the commodity rates prescribed in the *Shreveport Case*, *supra*, for distances of 500 miles and over 475 miles, the maximum of the Shreveport scale, and also unreasonable to the extent that they exceed rates for greater distances made with what complainants believe would be a proper relation to the Shreveport scale, in violation of both section 1 of the act to regulate commerce and section 10 of the federal control act. The fifth-class rates applicable from Galveston to the territory described are also alleged to be unduly prejudicial to that point as compared with the rates referred to from St. Louis and other points.

In the *Shreveport Case*, *supra*, we stated that:

Rates on iron and steel articles will apply on angle, hoop, rod, band, bar, boiler, plate, skelp, tank and boiler plates, band iron for water tanks, cisterns, and conduits, nail plates, beams, columns, and girders, bridge material, rivets, nuts, bolts, washers, channel iron, zees and tees; iron angles, turnbuckles, metal expanded sheets, including expanded steel lath and perforated iron lath, metal reinforcement, roofing, and sheet.

These commodity rates apply on straight or mixed carloads. The mixture of iron and steel articles which may be shipped from Galveston at the fifth-class carload rates is extremely restricted. The less-than-carload rate applicable to the transportation of many articles of iron and steel from Galveston is fourth class, and the restricted mixture requires, in many instances, the payment of such rates upon articles which, under the finding in the *Shreveport Case*, *supra*, would be moved in mixed carloads at 60 per cent of the fifth-class rates. Commodity rates also apply to the transportation of iron and steel articles in carloads shipped from Pittsburgh, Pa.,

Chicago, Ill., St. Louis, Mo., Memphis, Tenn., and other points to the destination territory herein concerned. These rates apply to mixtures of iron and steel articles which are broader than the mixture permissible under the carload rates from Galveston. Complainants request that Galveston shall be accorded the mixture privilege prescribed in the *Shreveport Case, supra*.

Attention is also directed to departures from the long-and-short-haul provision of the fourth section. They are illustrated by two typical examples: The present commodity rate from Galveston to Amarillo, Tex., on iron and steel articles is 40 cents per 100 pounds. The line of the Chicago, Rock Island & Pacific Railway from Dallas to Amarillo extends through Lawton, Bridgeport, and Elk City, Okla. The fifth-class rates from Galveston applicable to these points are, respectively, 67.5 and 85 cents per 100 pounds. The commodity rate applicable on iron and steel articles from Galveston to Shreveport is 33 cents per 100 pounds, while to Leesville and South Mansfield, La., points intermediate to Galveston and Shreveport on the line of the Kansas City Southern, the rates are in each instance 49 cents per 100 pounds.

It is admitted on behalf of defendants that the fifth-class rates from Galveston to the territory described do not constitute a proper adjustment. They differ, however, with the complainants as to the manner in which the rates shall be revised to render them reasonable and nondiscriminatory. Defendants offer to publish commodity rates from Galveston to the territory described on a distance basis which they contend will result in making the rates from Galveston into Oklahoma practically the same, mile for mile, as the rates from St. Louis to that territory. The rates from St. Louis, and related points, to Oklahoma, however, apply to groups in that territory, and a distance scale of rates from Galveston, it is admitted, will not bring about an exact equalization.

There are two sets of commodity rates applying from St. Louis to this territory—the one applicable to what is termed merchant mixture, consisting of angle, band, bar, and channel iron and steel, bolts, nuts, and rivets, with other miscellaneous articles more or less in the first stage of manufacture; and the other termed structural mixture, consisting of angles, beams, braces, castings, and miscellaneous articles used in connection with structural materials, the rates on the latter group being generally somewhat higher than on the former. Defendants state that they are willing to make the proposed commodity rates from Galveston applicable to the mixture now provided in connection with the rates from St. Louis to Texas, which includes, practically in their entirety, both the merchant and

structural mixtures above described, with several additional articles. The proposed mixture includes all the items on which the rates from Galveston to Shreveport are applicable, with the exception of sheet boiler, expanded sheets, expanded lath, perforated lath, metal reinforcement, and roofing.

This adjustment is not satisfactory to complainants, who assert that only the commodity rates prescribed in the *Shreveport Case*, *supra*, and the mixture there permitted will cure the alleged unreasonableness, discrimination, and fourth section departures. It should be stated that complainants' demand for the Shreveport commodity rates on articles of iron and steel is coupled with a willingness to have those rates subject to the increase of 25 per cent under General Order No. 28 of the Director General.

The following table shows the present adjustment from Galveston and St. Louis and complainants' and defendants' proposed adjustments from Galveston, rates being stated in cents per 100 pounds:

To—	From Galveston, Tex.				From St. Louis, Mo.		
	Miles.	Present rate.	Rate proposed by—		Miles.	Rates.	
			Complainants.	Defendants.			
Bartlesville, Okla.....	647	90	47	68	448	1 54	1 62.5
Cushing, Okla.....	595	85	43.5	64	530	1 62.5	1 69
McAlester, Okla.....	480	71.5	43	63	488	1 54	1 62.5
Muskogee, Okla.....	543	81.5	44.5	65	425	1 50	1 56.5
Oklahoma City, Okla.....	552	71.5	43	63	543	1 62.5	1 69
Tulsa, Okla.....	597	85	46	68	425	1 54	1 62.5
Alexandria, La.....	300	56.5	33.5	45	599	1 37.5	1 45
Lake Charles, La.....	137	34	25.5	39	608	1 50	1 59
Leesville, La.....	174	49	29	43	679	1 64	1 76.5
Lafayette, La.....	213	56.5	32	47	685	1 47.5	1 65
Mansfield, La.....	251	49	34	51.5	601	1 64	1 72.5
Monroe, La.....	297	61.5	39.5	53	501	1 37.5	1 45
Winnfield, La.....	258	86.5	35.5	51.5	579	1 44	1 51.5

¹ Merchant iron and steel mixture.

² Structural iron and steel mixture.

Not only are the rates on iron and steel articles from St. Louis to Louisiana upon a different level from those to Oklahoma, but attention should be called to the fact that there is no well-defined structure of rates on the structural mixture to Louisiana points, rates on structural iron and steel articles being published under separate items, providing a variety of different mixtures, applicable to individual points, apparently to accommodate the particular point served. The rates on the structural mixture from St. Louis to Louisiana points shown in the table above, therefore, are not entirely representative.

In the plan proposed by complainants the rates to be applied average about 60 per cent of the fifth-class rates from Galveston. The

adjustment from St. Louis to Oklahoma, according to the evidence submitted by defendants, results in rates on what is termed merchant iron, averaging about 81 per cent of the fifth class, and rates on what is termed structural iron, about 88 per cent of fifth class.

To justify the adjustment proposed, defendants seek, first, to demonstrate that the iron and steel articles scale prescribed in the *Shreveport Case*, *supra*, is illogical and without basis, and, second, to show that the percentage relation they propose is reasonably aligned with iron and steel rates in the same territory. In support of the latter contention, defendants show the percentages and rates on bars, bands, flats, and rounds or merchant iron mixtures, so-called, are of the fifth-class rates in various territories. The fifth-class rates from St. Louis to the Dallas-Fort Worth group in Texas; Texas common points; Wichita, Kans.; Denver, Colo.; Fort Smith, Ark.; Kansas City, Mo.; and Albuquerque, N. Mex.; from New Orleans, La., and Minnequa, Colo., to Texas common points; and from certain points in Oklahoma to Waco, Galveston, and Beaumont, Tex., average 83 cents per 100 pounds. The average rates from and to the same points are, on merchant steel, 69 cents; on structural steel, 68 cents per 100 pounds; or, respectively, 83 and 82 per cent of the fifth-class rates. The present commodity rates applicable to the transportation of merchant iron from St. Louis to 33 representative destination points in Oklahoma are, on the average, 85 per cent of the fifth-class rates which would be applicable for the distances from St. Louis to these points if the *Shreveport* scale were applied. The structural iron rates from St. Louis to the same points are, on the average, 92 per cent of the same class rates.

The real party complainant in interest, the Texas Carnegie Steel Association, has two warehouses from which merchant and structural iron and steel are distributed in the same state of manufacture in which they are bought, and a fabricating establishment where semi-finished material is assembled into knocked-down bridges, docks, jails, and other structures. The inbound material originates in Pittsburgh, Pa., territory and is conveyed by rail to New York, N. Y., thence by water to Galveston. The rail-and-water rate upon the inbound material is generally 54.5 cents per 100 pounds. Complainant's selling price is that of Pittsburgh plus the freight rate from Pittsburgh to the point of sale. This basis is applied in competition with Mississippi and Missouri river crossings and such principal competitive points already mentioned as Chicago, St. Louis, and Memphis. Taking two centrally located points in the states of Oklahoma and Louisiana—i. e., Oklahoma City and Alexandria, respectively—the situation is sufficiently exemplified. The direct rate on

merchant iron from Pittsburgh to Oklahoma City for 1,156 miles is 85 cents per 100 pounds, 14.7 mills per ton per mile, while the rate from Galveston to the same point for 552 miles is 71.5 cents per 100 pounds or 25.9 mills per ton per mile. Of course, Pittsburgh, the originating point, has the advantage of having no inbound rate to pay; Chicago pays 27 cents and St. Louis 34 cents per 100 pounds inbound, and Galveston must suffer the disadvantage of being so far removed from the point of origin of material. To Alexandria, Pittsburgh pays 62.5 cents for a haul of 1,164 miles, whereas Galveston is charged 56.5 cents per 100 pounds for a haul of 236 miles or 48 mills per ton-mile. In mills per ton-mile the rates from Pittsburgh, Chicago, and St. Louis to Alexandria were about the same, or respectively, 10.7, 10.4, and 11.6 mills. If the commodity rate for the transportation of iron and steel articles from Galveston to Alexandria were upon the basis prescribed in the *Shreveport Case* it would be 24.6 cents per 100 pounds or nearly 21 mills per ton-mile. Adding the 25 per cent increase permitted under General Order No. 28, the earnings would be over 26 mills.

In *Southwestern Class Case*, 48 I. C. C., 379, we prescribed the Shreveport class scale between Oklahoma points and points in Texas, between points in Oklahoma on interstate traffic, between Shreveport and points in Oklahoma involved in the report in *Shreveport Chamber of Commerce v. K. C. S. Ry. Co.*, 39 I. C. C., 296, and between points in Kansas and points in Texas. In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, we found the class rates assailed between the Mississippi River crossings, Memphis to New Orleans, inclusive, and western Louisiana and southern Arkansas points unreasonable to the extent that they exceeded the Shreveport scale by more than 25 per cent—i. e., the increase permitted by the Director General of Railroads. Complainants urge that the above reports indicate that we found the difference in the transportation conditions in Oklahoma, Texas, southern Arkansas, and Louisiana, west of the Mississippi River, was not of enough importance to warrant a variation in the scale of distance class rates. Therefore, complainants contend that a reasonable basis of rates for the transportation of iron and steel articles in Texas would be reasonable for application to like traffic from Galveston to Oklahoma and the described territory of Louisiana.

Referring to the above table showing the rates from Galveston and St. Louis it will again be noted that the rates from St. Louis to Oklahoma points are upon a considerably higher level than those to Louisiana points. Other than an indefinite reference to competition the reason for this difference was not clearly indicated in the evidence. It is evident, however, that the same scale of rates from

Galveston to both Oklahoma and Louisiana will not eliminate the preference complained of, for if the rates from Galveston to Oklahoma are made, mile for mile, the same as the rates from St. Louis to that territory, and a similar scale extended into Louisiana, the rates from St. Louis to Louisiana will still be comparatively upon a much lower basis than the rates from Galveston.

In a recent case, *Memphis Southwestern Investigation*, 55 I. C. C., 515, it is stated that a careful study of the statistics submitted leads to the conclusion that, considering all the figures together, a uniform scale of class rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common-point territory in Texas. In the absence of evidence leading to a contrary conclusion it would appear that commodity rates on iron and steel articles throughout this territory should be upon substantially the same basis. It is clear that rates on iron and steel articles from Galveston to Louisiana and Oklahoma should not be upon a relatively lower basis than the rates on similar traffic from St. Louis, Chicago, and Pittsburgh to Oklahoma. While it is true that in the Shreveport case 60 per cent of the fifth-class scale was prescribed from Galveston to Shreveport on iron and steel articles, it must be borne in mind that that was primarily a discrimination case; that the carriers at that time proposed no increase in those rates; and that in removing the undue prejudice found to exist, we desired to disturb as little as possible the existing rate structures in that territory. The extension of 60 per cent of the fifth class under the Shreveport scale on iron and steel articles into Oklahoma would result in rates from Galveston to that territory much lower for like distances than the rates from St. Louis to the same territory, which latter rates were approved after full consideration in *The Iron and Steel Cases*, 36 I. C. C., 86. The structure of rates on iron and steel articles approved in that decision constitutes a very extensive adjustment which has proven satisfactory for a number of years and upon the record in this case, confined as it is to rates from Galveston, we can not approve the extension of rates from Galveston into Oklahoma, the effect of which would be to disturb the general iron and steel rate structure. The adjustment of rates to Oklahoma from Galveston which is offered by the defendants seems just in view of rates from other points. It is suggested in this connection, however, that distance rates might not entirely remove the undue preference in cases where rates from the favored points are made to groups of destinations. For this reason our finding is that the rates from Galveston should be equalized with those from St. Louis for similar distances.

Inasmuch as the rates from St. Louis and related points to Louisiana are upon an entirely different level from those into Oklahoma, the rates proposed by defendants can not be approved for application to Louisiana territory, and those proposed by complainants, while subject to criticism, will apparently be satisfactory to complainants and will do no injustice to defendants so long as they continue their present rates from St. Louis to that territory.

We find, therefore, that the rates applicable to the transportation of iron and steel articles, enumerated above, on which rates were prescribed in the *Shreveport Case, supra*, in straight or mixed carloads, from Galveston to all points of destination upon the lines of defendants in the state of Oklahoma have been shown to be unreasonable and unduly prejudicial, and for the future will be unreasonable and unduly prejudicial, to the extent that they exceed or may exceed the rates contemporaneously applicable to merchant mixture, so-called, of iron and steel articles from St. Louis to Oklahoma points for similar distances. We further find that the rates applicable to said iron and steel articles, in straight or mixed carloads, from Galveston to points of destination on the lines of defendants in the state of Louisiana west of the Mississippi River have been shown to be unreasonable and unduly prejudicial, and for the future will be unreasonable and unduly prejudicial, to the extent that they exceed, or may exceed, 60 per cent of the fifth-class rates prescribed in the *Shreveport Case, supra*, for similar distances, increased by not more than 25 per cent.

Nothing in this record is to be construed as authority to make the adjustment prescribed without compliance with the provisions of the fourth section and if it is found necessary to secure relief from the provisions of that section, appropriate application for such relief must be made.

An appropriate order will be entered.

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No. 10261.¹

ARMOUR GRAIN COMPANY

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

No. 10543.

MINNEAPOLIS TRAFFIC ASSOCIATION ET AL.

v.

DIRECTOR GENERAL, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted January 17, 1920. Decided April 8, 1920.

Upon complaints that due to congestion of grain elevators consequent upon complainants' inability to obtain, during a period of car shortage, cars sufficient in number for outbound loading, demurrage accrued upon grain, in carloads, shipped into transit points on local billing and there held in cars for unloading into the elevators, and that, in such circumstances, the rules governing the assessment of demurrage were and are unreasonable and unduly prejudicial; *Held*, That such rules are not shown to have been or to be unreasonable or unduly prejudicial. Complaints dismissed.

Jeffery, Campbell & Clark for Armour Grain Company and co-complainants.

W. P. Trickett and *T. A. McGrath* for Minneapolis Traffic Association and Randall, Gee & Mitchell Company.

E. M. Flott, A. H. Lossow, J. G. Drennan, E. A. Smith, J. C. Bills, and *J. N. Davis* for defendants.

¹ This report also embraces No. 10261 (Sub-No. 1), *Norris Grain Company v. Director General et al.*; No. 10261 (Sub-No. 2), *E. R. Bacon v. Director General et al.*; No. 10261 (Sub-No. 3), *Quaker Oats Company v. Director General et al.*; No. 10261 (Sub-No. 4), *Armour Grain Company v. Director General et al.*; No. 10261 (Sub-No. 5), *Same v. Director General et al.*; No. 10261 (Sub-No. 6), *Same v. Director General et al.*; No. 10261 (Sub-No. 7), *McKenna & Rodgers v. Director General et al.*; No. 10261 (Sub-No. 8), *Same v. Director General et al.*; No. 10261 (Sub-No. 9), *Rosenbaum Brothers v. Director General et al.*; No. 10261 (Sub-No. 10), *C. L. Dougherty & Company v. Director General et al.*; and No. 10261 (Sub-No. 11), *Mueller & Young Grain Company v. Director General et al.*

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

MEYER, *Commissioner*:

These proceedings were made the subject of a proposed report which was served upon the parties. Exceptions were filed by the complainants to the conclusions recommended by the examiner, and oral argument was had. Our report follows to some extent that proposed by the examiner.

These complaints, on account of similar issues, were consolidated. Certain features of No. 10543 require a separate consideration. It will be disposed of under the heading, "the Minneapolis case." No. 10261 and subnumbers are designated "the Chicago cases."

THE CHICAGO CASES.

The complainants are individuals and corporations operating transit-grain elevators at Chicago, Ill., and points in the vicinity thereof, known as Chicago district stop-over points. Complainants were, and are, permitted to unload into elevators for weighing, grading, cleaning, clipping, and otherwise treating grain moving on local billing to Chicago from defined producing points on the lines of the western carriers and, upon presentation of the paid inbound freight bill within one year after unloading, to reship the same or its equivalent to an eastern destination at the balance of the joint through rate applicable at the time of movement from original point of origin to final point of destination, or at proportional or "reshipping" rates, which in effect represent the balance of such through rates.

During the early fall and winter months of 1916-1917 certain demurrage charges were assessed against these complainants, in all but one instance under average monthly demurrage agreements in effect between complainants and the particular carriers upon whose lines their elevators are located. These charges, it is alleged, accrued on inbound shipments of grain which complainants were unable to unload within the free time allowed under the demurrage tariffs because of the congestion in their elevators, due to their inability to secure sufficient cars, or to obtain permission to reload unloaded inbound cars of the western carriers for outbound movements therefrom to eastern destinations. By complaints filed September 18, 1918, they attack the demurrage rules as unjust, unreasonable, and unduly prejudicial, asserting that these charges resulted directly from the defendant carriers' failure and refusal to furnish them with sufficient cars for the outbound shipments from their elevators, while furnishing cars to other shippers for out-

bound movements of grain and other commodities. They ask reparation in the amount of these demurrage charges, or the waiver thereof in those instances in which these charges have not been paid, and the establishment of a demurrage rule for the future adapted to the peculiar conditions surrounding the transportation of grain.

Grain is known either as "spot" or "to arrive." "Spot" grain is bought on sample from commission merchants on the board of trade after arrival of the car in the switching district. "To arrive" grain is purchased either direct from country dealers or through commission men for shipment from 20 to 90 days thereafter as agreed upon.

At the commencement of the harvest period in July and August, 1916, having experienced no difficulty up to that time in obtaining cars for outbound shipments, complainants made purchases of grain, "spot" and "to arrive," to meet their eastern sales but not in excess of the capacity of their elevators after deducting the tonnage representing sales made. In the early part of September they found it difficult to obtain cars for eastern destinations. Inbound shipments began to accumulate; their elevators became congested; and cars had to be held on the tracks. This shortage of cars for eastbound shipments became increasingly acute during the following months and was not alleviated until the reopening of lake navigation in the following April. What percentages of complainants' purchases during this period consisted of "spot" and "to arrive" grain is not shown, nor did they segregate, in their claims for reparation, cars bought after arrival from those containing shipments of "to arrive" grain. This, defendants insist, is fatal to the complainants' claims for reparation, since demurrage may have accrued on cars of "spot" grain while they were on the carriers' hold tracks awaiting switching instructions.

Complainants contend that the car shortage during this period was considerably accentuated by the carriers' enforcement of the provisions of the car-service rules requiring the return of empty equipment in the direction of the owning road, thereby preventing them from reloading inbound cars of the western lines made empty at their elevators. Also they assert that because of Chicago's location as the terminus of the eastern and western carriers, these rules worked a particular hardship upon them which did not obtain at other grain centers, excepting possibly Peoria, Ill., and St. Louis, Mo.

The evidence of the parties, complainant and defendant, of the number of cars ordered and the number of cars furnished is conflicting. Complainants' orders were generally verbal and the records of them informal. "Pick-ups," apparently inbound cars which com-

plainants were able to use for outbound loading, were not considered by complainants as furnished by defendants. Defendants by taking such cars into consideration show that certain of the complainants loaded more cars than they ordered and that more cars moved outbound during certain periods than moved inbound. It is established, however, that efforts were made to obtain more cars for eastern shipments and that complainants could have used more cars than they were furnished.

Considerable testimony and numerous exhibits were submitted by both parties to show the daily condition of the elevators, defendants seeking to prove that the elevators were not filled to capacity as claimed. Complainants explain that the theoretical capacity represents the total cubical capacity of the elevator expressed in bushels when fully loaded with one kind of grain; that in practice at least 10 per cent of this capacity has to be reserved for working space, and that if different grains or different varieties of the same grain are handled these grains must be kept in separate bins, in which case 60 per cent of the theoretical capacity is taken as representing its practical capacity.

It is stated by complainants that although much testimony was taken the fundamental issue is: Was the carrier at fault in not furnishing cars for outbound loading?

The defendants concede a car shortage at Chicago during the period in question and that the elevators became congested. They point, however, to the complete disarrangement in the transportation system of this country then existing as a consequence of the war; the enormous increase in shipments to Atlantic port cities for export; and the withdrawal of vessels from the lake and coastwise trade for trans-Atlantic service, which threw upon the rail lines in this section the transportation of additional tonnage formerly carried by water. Industries devoted to the manufacture of munitions and supplies required service, and ship movements from Atlantic ports due to the submarine campaign were irregular. Crowded terminals and cars held in load with export freight were additional factors, and various embargoes prevented shipments to eastern destinations even when cars were available.

The Canadian lines were likewise congested; the lines leading to Norfolk and Newport News were burdened with coal shipments, and the south Atlantic ports were without extensive facilities for handling grain shipments for export besides being objectionable to the entente powers because of the longer ocean routes. The conditions existing upon the eastern lines at this time and the efforts undertaken by the various committees of the carriers to relieve this congestion are detailed in *Car Supply Investigation*, 42 I. C. C., 657.

The defendants further assert that complainants could have materially increased the outbound movement from their elevators had they loaded available cars to their full capacity, which was the practice in respect to export grain. However, complainants' contracts, according to the custom of the trade, called for shipments in carlots or multiples thereof containing a stipulated number of bushels, whereas sales for export are made in multiples of 100,000 bushels.

As a further defense, the Illinois Central Railroad, upon whose lines Armour Grain Company's central A elevator is situated, contends that on shipments to eastern destinations it performs only a switching service and that therefore under authority of *Wabash Sand & Gravel Co. v. V. R. R. Co.*, 31 I. C. C., 344, there was no obligation on it to furnish cars to this complainant for shipments to such destinations.

The defendants, with respect to the proposed demurrage rule, assert that the code of demurrage rules was adopted only after careful study on the part of the carriers and embodies our views as well as those of state commissions and shippers at large. Its main purposes are to remove unjust practices and inequalities formerly prevailing by establishing uniform rules and charges; to secure prompt release of equipment, and to prevent car shortage in times of increased demand by providing against unreasonable detention of cars by shippers. They urge that the proposed rule would violate these principles; unduly prefer transit-grain shippers to the prejudice of other grain shippers; violate the principle of tariff construction which requires charges to be ascertainable from a tariff, since the applicability or nonapplicability of the demurrage charge is made dependent upon whether the elevator is filled or not, a fact peculiarly within the knowledge of the shipper, and would provide no means of determining when and under what circumstances a carrier is at fault in not promptly furnishing cars for outbound shipments.

While conceding that the charges were legally assessed, complainants attack the lawfulness thereof because of the duty imposed by law upon the carriers to furnish shippers with cars upon reasonable request. They urge that by contract the carriers were, and are, obligated to furnish them with outbound cars or relieve them from demurrage on their inbound cars. This, they assert, follows from the fact that their elevators are located upon the lines of but one carrier which is thus the delivering line of the inbound shipment and the initial carrier of the outbound shipment, and that the carriers, by joint tariff arrangements, have given them the benefit of rates which are actually or in effect through rates from original point of origin to final destination as of the date of the original shipment. They further urge that from the nature of their business as handlers

of grain in transit it is unreasonable to assess demurrage on inbound shipments which through no fault of their own can not be unloaded into their elevators, especially when this is due to their failure to obtain sufficient outbound cars.

The duty resting upon carriers to furnish cars to shippers upon reasonable request is not absolute. The Supreme Court in *Penna. R. R. v. Puritan Coal Co.*, 237 U. S., 121, 133. says:

Ordinarily a shipper, on reasonable demand, would be entitled to all the cars which it could promptly load with freight to be transported over the carrier's line. But this is not an absolute right and the carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made and which it could not reasonably have been expected to meet in full.

Defendants have shown the sudden and great demands upon the eastern carriers brought about by the war; that these demands could not have been foretold or avoided; that as a result thereof there was an extraordinary congestion of cars in the east and a corresponding shortage of cars in other sections, from which it naturally followed that the defendant carriers could not supply complainants with cars to the number desired.

Although, for the purpose of applying rates, these shipments are regarded as through shipments from points of origin to final destination, they are in fact separate shipments to and from Chicago, under separate contracts for transportation, and demurrage accrues on the inbound shipment before the new contract for transportation to the east is made. The inbound shipment moves from the point of origin under a contract of carriage with Chicago as its destination and with the full rate to Chicago assessed. This contract is completed after proper placement of the car and a reasonable opportunity afforded for unloading, in this instance 48 hours. After notice of arrival of the shipment the shipper has complete control over it. He may sell it locally, reship it, or otherwise dispose of it as he sees fit. In the event he unloads the shipment into his elevator, he is not required to preserve the identity of the grain in order to secure the benefit of the joint through or proportional rates on his outbound shipments; and, except in the case of direct transit through the elevator, its identity is lost. The assumption that under a transit tariff, a constant flow of grain in and out of the elevator is contemplated and that a through movement is therefore provided for, would require the carriers to furnish during times of car shortage 100 per cent of cars required, to the exclusion of other shippers of traffic originating at Chicago.

While it can not be said that the holding of grain in the elevators was, during the entire time, for the benefit of the shipper, the send-

ing of the grain to the elevator and the unloading therein was for his benefit and on his orders, and but for this method of handling there would have been no interruption of the through transportation, no taking of possession by the shipper, and no demurrage would have accrued. The grain having been unloaded into the elevator, the complainants were thereafter in the same position as other shippers from Chicago, and, when the benefit of holding the grain ceased, were no more entitled to immediate movement than were other shippers.

It is admitted that the demurrage legally accrued on the inbound shipments. The failure of the defendants to furnish cars for the movement of other grain stored in the elevator can not be regarded, under the circumstances of this case, as a reason why demurrage charges should not be assessed on the inbound shipments. To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier.

UNDUE PREJUDICE.

Complainants assert that they were unduly prejudiced because on or about February 15, 1917, the Commission on Car Service, with the consent or knowledge of this Commission, directed the eastern lines to send 750 cars weekly to Minneapolis and St. Paul, Minn., for loading with shipments of flour, oats, corn, and seed grain to New England destinations. These cars were furnished at our direction for the purpose of relieving an acute food shortage in the New England states arising from inability of shippers at the twin cities to make shipments on their long-deferred orders from this territory. There is no specific evidence to show that the Chicago grain dealers as a consequence failed to secure their proper proportion of empty equipment for eastern destinations as compared with grain dealers at the twin cities.

Complainants also attack defendants' car-service rules as unduly prejudicial to them, particularly so following the amendments effective February 21, 1917, in that they were prevented from re-loading empty western equipment for eastern destinations, while shippers at Omaha, Kansas City, and like grain centers, not so handicapped, could make shipments through Chicago to eastern destinations.

The defendants concede that the enforcement of the car-service rules worked to the disadvantage of the Chicago grain dealers, but assert that the enforcement of these rules was the only method then available to relieve the car shortage prevailing in the west through

preventing further congestion of western equipment in the east and forcing the return of such equipment from the eastern carriers, and further that these rules had our sanction, as shown by the finding and order in the *Car Supply Investigation Case, supra*.

The complainants' further contention that the car-service rules were not incorporated in schedules on file with the Commission is without merit. No direction that they should be so incorporated and filed had been made by the Commission under the car-service amendment to section 1 of the act, and their publication in such manner is not otherwise required by the act.

The specific evidence submitted by the complainants to show undue prejudice relates to the elevators at Matteson, Ill., operated by McKenna & Rodgers and C. L. Dougherty & Company, and the Grand Trunk elevator at Elsdon, Ill., operated by Armour Grain Company.

The first two complainants assert that the Michigan Central Railroad, on whose line their elevators are located, unduly preferred its own elevator at Kensington, Ill., in the distribution of cars. The statements made by the complainants and the defendant as to the exact number of cars unloaded into and loaded from these elevators can not be reconciled.

These complainants undertake to differentiate between what they denominate "made" or "pick-up" cars, and new cars furnished directly by the carriers at Chicago. The "made" cars represent carriers' equipment withdrawn from the available supply for complainants' use, and nothing warrants their deduction from the total number of cars shipped by these complainants in determining whether they were unduly prejudiced in the allocation of cars.

The Kensington elevator is in the nature of a public elevator in that it supplies storage space for a number of small shippers who have no elevators of their own. It is also used by the Michigan Central for the purpose of transferring shipments originating west of Chicago and billed through to eastern destinations which come into Chicago in bad-order cars, and in transferring through shipments where the right of weighing in transit is permitted. Defendant contends that based on the size of the elevator in question, the Kensington elevator was entitled to six times as many cars as either of these complainants, exclusive of shipments transferred in transit, and that as compared with the outbound shipments made by these complainants for a like period of time, the Kensington elevator was not furnished in proportion as many cars as complainants. This defendant asserts further, in reply to the complainants' assertions that no demurrage was assessed during this period at the Kensington elevator, that it could not legally assess demurrage on the through shipments which were transferred in transit.

About November 10, 1916, C. L. Dougherty & Company, after receipt of their demurrage bill for October, discontinued the buying of "spot" grain, but bought instead "to arrive" grain, and it was not until after December 12, 1916, when they stopped purchasing grain altogether and accepted no new orders, that they were able to prevent further demurrage from accruing.

The testimony submitted on behalf of Armour Grain Company to show undue prejudice in the distribution of cars at the Grand Trunk elevator consists largely in general declarations that the Grand Trunk Railway, whose elevator they were operating under lease, failed to furnish their company with the proper number of cars until the superintendent of the elevator refused to make further transfers through this elevator on account of bad-order cars for the Grand Trunk Railway, for which service Armour Grain Company received an allowance, without at the same time receiving an equal number of cars for their own use. As this was the only elevator on the lines of the Grand Trunk in the Chicago district, and as the complainant had full control over the operation of the elevator, it appears quite probable, as testified to by the yardmaster of the Grand Trunk, that the number of cars transferred for the account of the Grand Trunk depended entirely on the willingness of the superintendent of that elevator.

The evidence submitted fails to show that any one of the complainants was unduly prejudiced by any of the defendant carriers in the allotment of cars for outbound shipments. It is unnecessary, therefore, to determine under what, if any, circumstances a showing of undue prejudice in connection with the distribution of cars for the movement of the complainants' outbound shipments would entitle them to reparation for demurrage charges accruing from their failure to promptly unload their inbound shipments. It is also not necessary to consider the defense interposed by the Illinois Central that no duty rested on it to furnish cars for outbound movements to eastern destinations.

Upon consideration of the whole record, we are of the opinion and find that the demurrage charges on the shipments under consideration were legally assessed; that the demurrage rules are not shown to be unreasonable; and that complainants are not shown to have been unduly prejudiced or otherwise injured in violation of the act to regulate commerce.

The complaints will be dismissed.

THE MINNEAPOLIS CASE.

The complainants are the Minneapolis Traffic Association and the Randall, Gee & Mitchell Company. The latter, the real party

in interest, is engaged in the purchase and sale of grain at Minneapolis, Minn., and is referred to herein as the complainant. Based upon reasons similar to those set forth in the Chicago cases, they attack the reasonableness of the demurrage rules under which the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, assessed charges for the month of September, 1916, and for the months of December, 1916, to March, 1917, inclusive, on numerous inbound carloads of oats held in excess of free time allowed for unloading into a transit-grain elevator located at Amery, Wis. As in the Chicago cases, the cause for the detention of the inbound shipments at Amery was the congested condition of the elevator at that point resulting from the carriers' inability to supply cars for outbound shipments for New England destinations in sufficient numbers to offset the inbound movements to the elevator. Also the carriers' justification for their failure to furnish cars to the number requested is the same as that interposed in the Chicago cases, namely, the car shortage brought on by the extraordinary congestion of traffic in the east consequent upon the unusual conditions arising from the war. It is only necessary therefore to consider this case with respect to certain features which were not present in the Chicago cases.

Amery is a local station on the Soo line, 65 miles east of Minneapolis. During the period in question, specific proportional or "reshipping" rates applied on oats and other grain from Minneapolis, and points named, to eastern destinations. The applicable tariffs provided that shipments of grain by way of the Soo line from Minneapolis "may be stopped for cleaning, rehandling, or weighing at Amery or Osceola, Wis., and reshipped via this line at the rate in effect at the time of original shipment from point of origin to final destination on the commodity as reshipped." The rates applied only on shipments originating beyond Minneapolis on which the local rate up to Minneapolis was not less than $7\frac{1}{2}$ cents per 100 pounds on oats, or on which the through rate from original point of shipment to final point of destination exceeded the reshipping rate by that amount. Local billing was taken out from Minneapolis to Amery and it was only after the shipments were made ready at Amery that new billing to eastern destinations was taken out at Minneapolis. Upon this billing the rate paid up to Amery was credited as prepaid on the reshipping rate named from Minneapolis. The complainant does not attack this practice but, on the contrary, states that it took out local billing to Amery on the inbound shipments it bought at Minneapolis in accordance with an agreement between it and the Apple River Milling Company, which operated the elevator at Amery. The latter, by this agreement, then unloaded, handled,

and reloaded these shipments at complainant's directions at a stipulated price per bushel, and accorded storage space in its elevator to the amount of 20,000 bushels. By reason of this storage space the complainant was enabled to make outbound shipments of a less tonnage generally than the inbound shipments indicated.

The complainant's shipments were in no sense analogous to "through-billed track grain," which is identity-preserved grain on which the carriers accord the privilege of stopping in transit for direct transfer through their elevators and which must be ordered forward within a stipulated period of time. The complainant does not question the legality of these demurrage charges. The fact that reshipment to eastern destinations was intended in no way affects the carrier's right to assess demurrage. Under the billing used, the complainant could have disposed of the shipments locally or reshipped them to other destinations. Moreover, the demurrage complained of was assessed against the Apple River Milling Company under an average agreement which that company had with the Soo line so that the complainant in effect obtained a benefit of credits for prompt release of cars by that company to which it otherwise would not have been entitled.

In a situation such as this, where grain at a competitive point is delivered to a carrier to transport to a transit point on its line which is entirely dependent upon it for service, and the carrier has reason to believe that reshipment is intended, every effort should be made by the carrier to furnish equipment for prompt shipment from the transit point. Under the circumstances of this case, however, in times of car shortage, the failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments.

In the view taken of this case, it is unnecessary to consider the details submitted respecting the number of the inbound and outbound shipments to and from Amery or the condition of the elevator at that point during this period. Nor is there any need to consider the evidence submitted with respect to the distribution of cars for the complainant's outbound shipments. Undue prejudice is not alleged.

The complainant relies upon the case of *Eastern Railway v. Littlefield*, 237 U. S., 140, contending that some time in the spring of 1916 the representatives of the Soo line were advised of the complainant's desire to handle shipments of oats through the elevator at Amery for eastern destinations, whereupon they gave assurance that the complainant could count upon two cars a day; that its agent, the Apple River Milling Company, presented regularly to the agent at Amery written orders for 25 to 35 cars to be delivered at the rate of

2 or 3 cars per day, as indicated, for loading with oats for New England destinations. Whether complainant had or had not a specific contract with the Soo line for the delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages under the conditions appertaining in the above-cited case, raises an issue which is not before us nor one within our jurisdiction to decide.

Upon consideration of the whole record, we are of the opinion and find that the demurrage charges were legally assessed, and that the demurrage rules are not shown to be or to have been unreasonable.

The complaint will be dismissed.

57 I. C. C.

No. 9443.¹

F. J. LEWIS MANUFACTURING COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted January 14, 1920. Decided April 13, 1920.

Rates to Birmingham, Ala., on tar in tank-car loads from Nashville, Chattanooga, and Memphis, Tenn., New Orleans, La., Pensacola, Fla., and south Atlantic ports and on creosote oil in tank-car loads from New Orleans not found unreasonable or otherwise unlawful. Complaints dismissed.

George Link, jr., and J. L. Roberts for complainants.

Charles J. Rixey, jr., Nelson W. Proctor, D. Lynch Younger, and Robert N. Nash for defendants.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

A proposed report in this proceeding was served upon the parties, and exceptions were filed by complainants. The two cases embraced herein were made a part of our general investigation in No. 9516, *Southeastern Rate Adjustment*.

Complainants are corporations engaged in the manufacture of roofing and paving materials and creosote oil, having plants at North Birmingham and Fairfield, Ala., within the switching limits of Birmingham, Ala. Their complaints filed December 6, 1916, and November 15, 1917, allege that the rates then in effect on tar in tank-car loads to Birmingham from Jacksonville and Pensacola, Fla., Savannah and Brunswick, Ga., Charleston, S. C., New Orleans, La., and Memphis, Chattanooga, and Nashville, Tenn., and on creosote oil in tank-car loads from New Orleans to Birmingham were unjust and unreasonable. The rate on tar from Nashville is also alleged to have been unduly prejudicial and preferential in relation to rates on asphalt from New Orleans to Nashville and Birmingham. The complainants ask the establishment of reasonable and nonprejudicial rates for the future and seek reparation.

After the hearings supplemental complaints were filed, making the Director General of Railroads a defendant and attacking the rates initiated by him. Further hearing was waived, but the Director General's certificate as to the necessity for increased revenues was made a part of the record. Rates will be stated in cents per 100

¹ This report also embraces No. 9968, *Barrett Company v. Louisville & Nashville Railroad Company and Director General*.

pounds and are those in effect at the time of the hearings unless otherwise indicated.

Crude tar, the principal raw material used by complainants, is obtained from coke ovens and gas plants at a cost of \$5 or \$6 per ton. From it they distill paving and roofing pitch, fuel pitch, and creosote oil. Most of their crude tar is brought through pipe lines from points in the Birmingham district. The remainder is transported in tank cars, most of which are owned by complainants, from other places in Alabama and from the points of origin named in the complaints.

The following table compares the rates assailed, which became effective January 1, 1916, with those in effect prior thereto and those suggested by the complainants as reasonable maxima:

Statement of rates on tar and creosote oil to Birmingham from various points of origin.

Points of origin.	Commodity.	Distance.	Rates assailed.	Rates prior to Jan. 1, 1916.	Rates sought.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Memphis.....	Tar.....	251	17	13	8
New Orleans.....	do.....	355	21	15	8
Pensacola.....	do.....	250	19	15	9
South Atlantic ports.....	do.....	1444	22	15	10
Chattanooga.....	do.....	143	8	8	5
Nashville.....	do.....	205	16	12	7
New Orleans.....	Creosote oil.....	355	21	8	8

¹ To North Birmingham, 8 cents.

² Average.

Since January 1, 1916, tar, asphalt, and petroleum tailings or road oil have generally taken the same rates in southeastern territory. Tar was put on a parity with asphalt in 1901 because of their similar use for roofing and street-paving purposes. Owing to increasing competition between asphalt and road oil for use in road building the carriers in 1913 established the same rates for these two commodities, reducing their rates on road oil and raising those on asphalt. No corresponding advance was made as to tar, however, until January 1, 1916, when in the revision of rates made in accordance with our order in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, the same rates were made applicable to tar, road oil, and asphalt. The rates on these commodities from all points of origin considered herein, except Chattanooga and the south Atlantic ports, were adjusted differentially with respect to the rate of 23 cents from Cincinnati to Birmingham. The rate from Chattanooga was not increased at that time, but at the hearing it was testified that defendants were preparing to raise it to 14 cents. The rate of 22 cents from south Atlantic ports, established under the readjustment of January 1, 1916, was based upon a scale proposed at the same time for adoption within the state of Georgia.

Complainants concede that asphalt, road oil, and refined tar may properly take the same rates, but contend that the distinction between crude and refined tar should be recognized in rate making. They assert that crude tar is a raw material, containing about 5 per cent waste matter, and deny that it is ever used in competition with asphalt in highway construction. It appears, however, from evidence adduced by defendants, that crude tar may be, and in fact is, used in road building in competition with asphalt and petroleum products, though not so widely as refined tar. Refined tar seems to be worth but slightly more than crude tar, and the record supports the conclusion that the principal object in refining tar is not to enhance its value as a road-building material so much as to recover from it various chemical products, notably creosote oil, for which there has been an increasing demand. Defendants proved by samples exhibited at the hearing that crude and refined tar can not be distinguished from each other, or from asphalt and road oil, except by experts. For that reason, they contend, a difference in rates would be impracticable.

Complainants introduced figures showing that the average revenue per loaded freight-car mile on all traffic hauled by defendants during the year ended June 30, 1916, was less than half of the average earnings under the rates assailed for hauls longer than the average on all traffic; and that the revenue per ton-mile exceeded the average on all traffic. They cited rates on brick, cement, plaster board, wall plaster, magnesite, sulphur, and other low-grade commodities, applicable between the points herein considered, which were lower than the rates on tar, though in many other sections of the country tar takes substantially the same rates as the commodities named. Complainants also showed that the rates assailed were higher than those on tar from Birmingham to some of the points of origin named in the complaint.

Defendants cited rates on tar from Memphis and New Orleans to points in Arkansas, Louisiana, and Texas, which were higher than those to Birmingham, although the distances in most cases were less. They also compared the rates to Birmingham with those to other southeastern points from Ohio and Mississippi river crossings, Gulf ports, and related points, showing them to be properly adjusted thereto. The rates from south Atlantic ports to Birmingham were shown to be relatively reasonable in comparison with those from the same points of origin to other destinations in Alabama, Georgia, and Florida for similar distances.

Defendants' general policy of applying the same rates to tar, road oil, and asphalt throughout southeastern territory is subject to one important exception. For several years they have published rates

from New Orleans, Mobile, and certain other points to Birmingham, Nashville, Atlanta, and other destinations on imported asphalt from ship side and on asphalt refined from crude petroleum imported from foreign sources other than Europe, Asia, and Africa, which are considerably lower than the domestic rates on asphalt and tar. Defendants admit that these import rates are unduly low, and no satisfactory reason for either their original establishment or their continuance is disclosed. Pointing out defendants' inconsistency in maintaining such low import rates, complainants argue that the unreasonableness of the rates on domestic tar and asphalt is thereby proved. The evidence of record, relating to the general structure of rates on tar, asphalt, and road oil in this territory, however, indicates that it is the import rates, rather than those assailed, which are in need of realignment.

The allegation of undue prejudice relates solely to the maintenance of rates on imported asphalt from New Orleans to Birmingham and Nashville of 13 and 14 cents, respectively, while the rate from Nashville to Birmingham was 16 cents. No evidence as to this issue was introduced, although the record contains general statements to the effect that complainants were prejudiced by the lower import rates applied to destinations other than Birmingham, which are clearly irrelevant under the pleadings.

Complainants are interested in the rate on creosote oil from New Orleans to Birmingham chiefly because of the fact that in the past they have imported some of this oil through New Orleans and have marketed it in conjunction with that produced at their Birmingham plants. Prior to January 1, 1916, a rate of 8 cents from New Orleans to Birmingham had been established by the carriers in the belief that a low rate was necessary to enable imported oil to compete with the domestic product. Upon learning that the imported oil shipped to Birmingham was not sold there but was stored and later re-shipped to other points, defendants increased the rate on shipments in tank cars to 21 cents on January 1, 1916. This rate is the same as that on tar, although creosote oil is classified sixth class in southern classification, while tar is in class A. Defendants cited other rates on creosote oil in this territory, in relation to which the rate assailed appears to be reasonable. Complainants cited a rate of 8 cents from New Orleans to Louisville, Miss., but no movement under it was shown. The only argument advanced on brief against the rate complained of is based on comparative ton-mile earnings.

Upon consideration of the entire record we are of opinion and find that the rates assailed were not and are not unreasonable or otherwise violative of the interstate commerce act. The complaints will, therefore, be dismissed.

No. 7521.
MEEKER & COMPANY
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted June 17, 1916. Decided April 12, 1920.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal in prepared and pea sizes, in carloads, from Melville colliery in the Wyoming anthracite coal region of Pennsylvania to Elizabethport, N. J., for reshipment by water. Former report 38 I. C. C., 333.

Robert D. Jenks, William A. Glasgow, jr., and John A. Garver for complainant.

Jackson E. Reynolds and Charles E. Miller for defendant.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION :

By complaint filed November 28, 1914, Henry E. Meeker, an individual trading under the name of Meeker & Company, alleged that the rates charged by the defendant for the transportation of anthracite coal, in carloads, from Melville colliery and other collieries in the Wyoming coal district of Pennsylvania to Elizabethport, N. J., for reshipment by water were unreasonable, unjustly discriminatory, and unduly prejudicial. He asked reparation on all shipments on which the charges were paid "within two years prior to the date of the filing of this complaint to the extent that the charges * * * exceed such rates as the Commission may determine are just and reasonable." At the hearing of February 23, 1915, complainant explained that reparation was claimed on all shipments moving prior to the establishment by us of reasonable rates. This statement was not objected to by defendants. In our report of March 4, 1916, 38 I. C. C., 333, we found that just and reasonable maximum rates for the future from the coal region affected had been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Case*. The question of reparation was held in abeyance and presents the only issue remaining to be determined. Rates are stated herein in amounts per long ton of 2,240 pounds.

The shipments originated at the mines of the West End and Melville Coal companies at Mocanaqua, Pa. Because of common ownership the mines of these companies are known collectively as the Melville colliery. The shipments were delivered to the defendant at the colliery's interchange tracks at New Yard, Pa., a point on the Mocanaqua & Eastern Railroad, from which point they were transported by it to Elizabethport, a distance of approximately 165 miles. The Mocanaqua & Eastern, a road some 3 miles in length, connects the Melville colliery with the defendant's Nanticoke branch at Lee, Pa. It is owned and operated by the colliery. Complainant bought the shipments at prices f. o. b. breaker, and paid and bore the charges thereon at the following then applicable rates: Prepared sizes, \$1.55; pea size, \$1.40; buckwheat, \$1.20; rice and smaller sizes, \$1.10. In the *Anthracite Case* we found that the defendant's rates for this service were unreasonable to the extent that the rates on prepared sizes exceeded \$1.40, and on pea and smaller sizes \$1.30, which rates became effective on April 1, 1916.

As proof of the unreasonableness of the rates assailed, complainant relies largely upon our findings in the *Anthracite Case*, to which proceeding the defendant was a party and represented by counsel, and our previous decisions in *Meeker & Co. v. Lehigh Valley R. R. Co.*, 21 I. C. C., 129, and *Marian Coal Co. v. D., L. & W. R. R. Co.*, 24 I. C. C., 140. Among other evidence stipulated into the record were certain testimony and exhibits submitted in the *Anthracite Case* relating to the cost of the service performed by defendant in transporting coal from the Pennsylvania anthracite regions to its New Jersey tidewater termini. This evidence, which we found to be substantially correct, is discussed and reproduced at length in our report in that case. Previous to our decision in the *Anthracite Case* we had found in the *Meeker Case*, *supra*, that the rates charged by the Lehigh Valley Railroad on anthracite shipments from the Wyoming region to Perth Amboy of \$1.55 on prepared sizes, \$1.40 on pea size, and \$1.20 on buckwheat, were unreasonable to the extent that they exceeded \$1.40, \$1.30, and \$1.15, respectively, and those rates were prescribed by us as maximum reasonable rates for the future. The rates so prescribed became effective on October 15, 1911, and were in effect during the period within which complainant's shipments moved. The distance from the Stevens colliery, there involved, to Perth Amboy is 165 miles, the same as in the instant case. The evidence submitted on behalf of complainant shows that for the greater part of this distance the lines of the Lehigh Valley and the defendant parallel or cross and recross each other. while the topography of the country and the general operating conditions applicable to the transportation of shipments from the Wyoming region to

tidewater over the lines of these carriers are substantially similar in character. In the *Marian Case*, *supra*, decided June 8, 1911, we found that the rates of \$1.58 on prepared sizes, \$1.43 on pea, and \$1.28 on buckwheat, charged by the Delaware, Lackawanna & Western Railroad on shipments from Taylor, Pa., another point in the Wyoming region, to Hoboken, N. J., a distance of 147.8 miles, were unreasonable to the extent that they exceeded rates of \$1.33, \$1.24, and \$1.09, respectively. The only additional evidence submitted by defendant in this case is that the Melville colliery is 14.88 miles farther from its assembling yards at Ashley, Pa., than other collieries served by its Nanticoke branch; due to which fact, coupled with the heavy grades and the irregularity of shipments, it is more expensive to assemble shipments from this colliery than from other collieries in the Wyoming region. However, we are dealing here with group or blanket rates, and evidence as to individual items of cost at a particular mine must be considered with due regard to that fact.

Counsel for defendant contend that complainant has not shown that he was damaged by payment of the rates complained of. As evidence thereof it is shown that complainant voluntarily routed his shipments over defendant's line, whereas he was at liberty to route them by way of the Pennsylvania Railroad to South Amboy, N. J., by which route rates of \$1.40 applied on prepared sizes and \$1.25 on pea size. They contend further that if the rates established by our decision in the *Anthracite Case* had been in effect at the time complainant's shipments moved, he would have paid greater charges in the aggregate than he was assessed because of the increased rates subsequently established on sizes smaller than pea. These contentions are without merit. The fact that complainant may have had another route to another port by which lower rates applied did not affect his right to ship to Elizabethport over defendant's line and to be accorded on his shipments reasonable rates for the service performed. Furthermore, the fact that certain shipments may have moved at rates which were subsequently increased can not be considered as mitigating damages due to the collection of unreasonable rates upon other shipments of the same or different commodities. The right of a shipper to recover damages accrues when he pays an unreasonable rate, and the law does not inquire into later events. *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531.

Upon the facts of record we are of opinion and find that the rates charged by the defendant during the period from November 28, 1912, to April 1, 1916, for the transportation of complainant's shipments of anthracite coal, in prepared and pea sizes, in carloads, from the Melville colliery in the Wyoming region of Pennsylvania

to Elizabethport, N. J., for reshipment by water were unreasonable to the extent that they exceeded rates of \$1.40 per long ton on prepared sizes, and \$1.30 per long ton on pea size, which we find would have been reasonable maximum rates for this service. We find further that during the aforementioned period the complainant made certain carload shipments of anthracite coal of prepared and pea sizes over the line of the defendant from the Melville colliery to Elizabethport for reshipment by water; that he paid and bore the charges thereon at the established tariff rates of \$1.55 for prepared sizes and \$1.40 for pea size; that in the payment of said charges he has been damaged to the extent that the charges so paid at the rates herein found unreasonable exceeded those which would have accrued at the rates herein found reasonable, and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined from the record and the complainant should comply with rule V of the Rules of Practice.

The evidence is not sufficient to establish the unreasonableness of the rates charged on sizes smaller than pea, and as no evidence was introduced to show that complainant has suffered any damages by reason of the unjust discrimination and undue prejudice alleged, his claim for reparation on such shipments is denied.

FOURTH SECTION APPLICATIONS Nos. 607, 1771, 1481, 1561, 1563, 1572, 1625, 1787, 2060, 3596, 3799, 4286, 4460, AND 4966.

FOURTH SECTION DEPARTURES IN RATES BETWEEN TRUNK LINE TERRITORY AND WEST-BANK LAKE MICHIGAN PORTS VIA CADILLAC, MICH.

Submitted March 2, 1920. Decided April 8, 1920.

Upon further consideration of certain fourth section applications by which the carriers parties thereto seek authority to continue lower class and commodity rates between points in trunk line territory and points on the west bank of Lake Michigan than the corresponding rates contemporaneously maintained to and from Cadillac, Mich., and other intermediate points in the 106 and 108 per cent groups in Michigan; *Held*, That fourth section relief may properly be granted, provided that rates to and from said intermediate points in Michigan conform to the conclusions of the Commission in *Michigan Percentage Cases*, 47 I. C. C., 409.

G. Ohlinger, E. M. Davis, and H. S. Bradley for petitioners.

Earl M. Medbery for Indian Packing Corporation; *F. M. Elkinton* and *Herman Mueller* for Manitowoc Association of Commerce, Two Rivers Chamber of Commerce, Sheboygan Association of Commerce, Manufacturers' Association of Sheboygan, and Cheese Shippers' Traffic Association; and *C. R. Hillyer* for Green Bay Association of Commerce, Menominee Commercial Club, Marquette Chamber of Commerce, and Marinette Chamber of Commerce.

E. L. Ewing for Cadillac Chamber of Commerce and Cadillac Lumber Exchange; *F. M. Ducker* for Northern Hemlock & Hardwood Manufacturers Association; *John H. Doran* for Menominee Commercial Club and Marinette Chamber of Commerce; and *W. F. Kerwin* for Green Bay Association of Commerce.

REPORT OF THE COMMISSION ON FURTHER HEARING.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

In *Michigan Percentage Cases*, 47 I. C. C., 409, we reserved our decision as to the propriety of certain fourth section departures, pending a further hearing of the applications protecting them, which further hearing has been had. A proposed report on further hearing was served upon the parties. No exceptions thereto were filed. We have followed the proposed report.

The applications are those by which the carriers parties thereto seek authority to continue to charge for the transportation of all freight between Menominee, Mich., Marinette, Kewaunee, and Manitowoc, Wis., located on the west bank of Lake Michigan, on the one hand, and New York, N. Y., and other points in trunk line territory, on the other, rates which are lower than the rates contemporaneously maintained between Cadillac, Mich., and other intermediate points, and the same eastern points.

Representatives of the commercial interests of the various west-bank points and representatives of Cadillac took part in the hearing and filed briefs.

Rates between trunk line territory and the points referred to bear a percentage relation to the New York-Chicago rates, as is more fully described in the case cited. The above-named points on the west bank of Lake Michigan are 100 per cent points, the Chicago basis having been extended north to include them.

The Ann Arbor Railroad participates in through rates between trunk line territory and the west-bank points by means of a car-ferry route operating via Frankfort, Mich., on the east bank of the lake. In hauling traffic to and from the west-bank points the Ann Arbor passes through portions of Michigan taking 106 per cent and 108 per cent of the New York-Chicago rates. A map accompanying the report in the *Michigan Percentage Cases*, 47 I. C. C., at page 421, shows the territory involved. The percentages for the Michigan groups are now four points lower than there shown. In that case, the situation here involved was described as follows:

The fact that the Ann Arbor Railroad has joined with other lines in according the 100 per cent basis of rates to points on the west side of Lake Michigan, while higher rates are maintained to and from certain intermediate points in Michigan, results in departures from the long-and-short-haul provision of the fourth section of the act and the application filed by the several carriers wherein they seek authority to continue the present adjustment were heard in connection with these complaints. That part of the main line of the Ann Arbor lying between Pennocks and Frankfort is located in rate groups taking 110 per cent or 112 per cent of the Chicago-New York rates. Points on this line are intermediate to Kewaunee, Manitowoc, and Menominee, west bank points taking the 100 per cent basis.

The establishment of the 100 per cent basis at the west bank points was the result of several competitive influences which existed at the time of the hearing. The principal competition was that between all-rail routes and the car-ferry routes. The latter can exist only by obtaining a part of the through traffic which otherwise would seek the all-rail routes. In addition to this competition, there was that of the so-called break-bulk routes maintained by several of the Michigan lines in connection with certain boat lines with which they interchange through traffic at points on the east side of the lake. The rates applying over these routes are lower than those maintained all rail and by car ferry, the differentials on the six classes being, in cents, 3, 2, 2, 1, 57 I. C. C.

On the principal commodities produced at Cadillac, lumber, acetate of lime, and pig iron, there are no fourth section departures, because the carriers have voluntarily reduced the rates on these commodities below the percentage basis that would ordinarily apply. On other commodities, including tables and chairs and automobile trucks, which are also manufactured at Cadillac, the rates are higher, but no substantial competition with the west-bank points is shown.

Cadillac would not be satisfied to have the fourth section departures removed by increasing the rates to and from the west-bank points; what it desires is a reduction of its basis to 100 per cent. Cadillac is but one point in the 106 per cent group, which adjoins other groups to the north taking 108 and 111 per cent. The reduction of Cadillac's percentage to 100 on all classes and commodities would tend to break down the whole rate adjustment in the northern part of the lower peninsula.

In our supplemental report in Investigation and Suspension Docket No. 965, *C. F. A. Class Scale Case*, 46 I. C. C., 475, at page 477, we said:

The rates from Buffalo, N. Y., and Pittsburgh, Pa., to Manitowoc, Kewaunee, and Green Bay, Wis., and other west-bank Lake Michigan ports north of Milwaukee are lower than the rates to Frankfort and Ludington, Mich., points located on the east bank of Lake Michigan. The observance of lower rates at west-bank points from Buffalo and Pittsburgh was brought about because the lines operating routes across the lake made rates to these points with relation to the rail-and-lake rates established by the boat lines from eastern trunk line territory. The boat lines have never operated into or out of east-bank Lake Michigan ports, so that rates to those points have not been affected by the rail-and-water competition. Rates from Buffalo and Pittsburgh to Frankfort and Ludington and various other intermediate points in Michigan are to be based on scale. The petitioners will be allowed to continue rates from Buffalo and Pittsburgh to west-bank Lake Michigan ports lower than to intermediate points via Ludington and Frankfort, upon condition that the rates to said intermediate points shall not exceed those authorized in *C. F. A. Class Scale Case* and *The Fifteen Per Cent Case*, *supra*. The situation eastbound is relatively the same as westbound and relief will be granted on the same conditions.

Following the above case, and in view of the evidence of existing competitive influences at the west-bank ports, we find that the carriers should be authorized to maintain between the west-bank points and points in trunk line territory class and commodity rates that are lower than the corresponding rates contemporaneously maintained between intermediate points in the 106 and 108 per cent groups in Michigan and the same eastern points, provided that rates to and from the said intermediate points shall not exceed the basis prescribed by us in *Michigan Percentage Cases*, *supra*. An order will be entered accordingly.

No. 10794.

CLEVELAND COOPERAGE COMPANY

v.

DIRECTOR GENERAL, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, ET AL.

Submitted January 12, 1920. Decided April 1, 1920.

Demurrage charges collected on a carload of barrels held at Cleveland, Ohio, on account of an embargo, found to have been illegal to the extent indicated.

Ira E. Arnold for complainant.

Charles P. Stewart for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

This case was made the subject of a proposed report. Exceptions thereto were filed by the complainant.

Complainant, a corporation engaged in the cooperage business at Cleveland, Ohio, alleges by complaint seasonably filed that the demurrage charges collected by defendants at Cleveland on a carload of barrels consigned December 15, 1917, from that point to Nutley, N. J., were unjust and unreasonable. Reparation in the sum of \$290 is prayed.

The shipment was loaded by complainant at its Cleveland plant on the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, on December 15, 1917, and was switched by that line to the Erie Railroad, on December 17, 1917. It was refused by the Erie on account of an embargo at Nutley, the billed destination. On December 19, 1917, it was returned to the complainant's plant by the Big Four and was there detained by complainant from that date until February 23, 1918, when, the embargo still being in effect, it was unloaded and released.

Complainant was operating under the average demurrage agreement and applied its maximum of five days' credits in cancellation of five days' debits on the car. For the remaining period of detention demurrage charges amounting to \$290 were assessed. Complainant does not attack the measure of the demurrage charges or the necessity for or propriety of the embargo, but insists that collection

of the demurrage charges complained of resulted directly from misinformation said to have been furnished by the Erie, and was, under the circumstances, unreasonable and unlawful. Complainant also contends that the Big Four erred in not informing it of the embargo and in accepting and switching the car.

The shipment was tendered for transportation during a period of freight congestion caused by war conditions when many embargoes were in force throughout the United States, particularly against shipments to the eastern seaboard. Complainant was informed of this general situation and alleges that on December 14, 1917, in response to an inquiry by telephone the division freight agent's office of the Erie at Cleveland advised it that Nutley was not embargoed. Complainant further states that in a subsequent telephone conversation the same agency said it understood that the car was to be loaded on the Erie tracks, and that while there was no embargo against shipments to Nutley so loaded, there was if loaded on a connecting line. The record does not disclose whether the complainant at the time of making the initial inquiry informed the Erie where the car was to be loaded, but the complainant takes the position that this carrier should have known that its plant was served by the Big Four only. Defendants have no record of these telephone conversations.

On December 8, 1917, the Erie declared an embargo against carload freight, with certain exceptions not material here, from connecting lines west of Jamestown, N. Y., when destined to points east of Hornell, N. Y., including Nutley. Defendants state that notice of this embargo was promptly served upon all connecting lines and was duly filed and posted at the local freight office of both the Erie and the Big Four in Cleveland.

Complainant made no inquiry of the Big Four concerning the embargo situation before the car was loaded. There was an understanding between the yardmaster of the Big Four and the complainant that, in view of the numerous embargoes then in effect, the latter, before loading shipments destined beyond the rails of this carrier, would inform itself with respect to the embargo situation by calling up connecting lines.

Complainant's first advice as to this embargo was received on December 19, 1917, upon return by the Erie of the bill of lading, unsigned, which had been transmitted to it on the day the car was delivered to the Big Four. The latter carrier had notice of the Erie's embargo against Nutley, nevertheless it accepted the shipment, the destination of which was shown on the switching card which accompanied the car, and moved it to its connection with the Erie. In thus accepting and moving the shipment the Big Four was at fault, and it was, therefore, in duty bound either to make delivery to the

Erie, to return the car to point of loading without charge, if requested, or to hold it subject to the shipper's instructions. On the other hand, upon receipt of advice that the car could not move in accordance with its instructions, the duty devolved upon complainant to abate the demurrage by unloading the car within the free time or by billing it to an unembargoed point. Having failed therein, it can not escape responsibility for the detention charges thereafter accruing. Although embargoes are placed by reason of a carrier's disability, demurrage may properly be assessed for a detention for which the shipper is directly responsible and which he can avoid or abate. *Reconsignment Case*, 47 I. C. C., 590, 634.

The erroneous information alleged to have been given by the Erie's agent, upon which complainant relies in support of its claim against that carrier, affords no basis for relief from us.

We find that the demurrage charges assailed are not shown to have been unreasonable or otherwise violative of the act except from December 17 to December 21, 1917, inclusive; that during this period the detention was due to an act of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, for which the shipper was not responsible; that complainant paid and bore these charges, has been damaged, and is entitled to reparation in the sum of \$25, with interest, for the illegal demurrage charges assessed.

An appropriate order will be entered.

57 I. C. C.

No. 10251.

NEBRASKA-IOWA FRUIT JOBBERS ASSOCIATION
v.
DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY, ET AL.

Submitted October 22, 1919. Decided May 3, 1920.

Refrigeration charges on fruits and vegetables transported from points in Kansas and Missouri to points in Iowa and Nebraska and between points in Iowa and points in Nebraska found not to have been unreasonable. In view of the changed situation, brought about by Perishable Protective Tariff No. 1, I. C. C. No. 6, which became effective February 28, 1920, subsequent to the submission of this case, and which was considered in *Perishable Freight Investigation*, 56 I. C. C., 449, record affords no basis for a finding with respect to present charges. Complaint dismissed.

W. H. Young for complainant.

Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

EASTMAN, *Commissioner*:

Complainant is an association of wholesalers and jobbers of fruits and vegetables. By complaint filed September 5, 1918, it brings in issue the reasonableness of defendants' refrigeration charges then in effect on fruits and vegetables from points in Kansas and Missouri to points in Iowa and Nebraska and between points in Iowa and points in Nebraska. We are asked to prescribe reasonable refrigeration charges for the future and to award reparation to certain named members of the complaining association on 13 carloads of grapes which moved during the statutory period.

At the first hearing it was agreed, upon complainant's request, that certain testimony by a witness for defendants as to icing costs at St. Joseph, Mo., should be supplemented by incorporation in the record of an exhibit, to be prepared by defendants, showing in detail the data and methods of computation used. This was done. The report proposed by the examiner discussed the figures in that exhibit. Complainant then asked and was accorded further hearing to afford it opportunity for cross-examination as to the exhibit. Thereafter a second proposed report was put out by the examiner and to

this no exceptions were filed. Final disposition of the case was withheld pending the result of our investigation, made at the request of the Director General of Railroads, concerning his proposed Perishable Protective Tariff No. 1. Our recommendations with reference thereto appear in *Perishable Freight Investigation*, 56 I. C. C., 449.

Complainant's members ship grapes, principally from Council Bluffs, Iowa, and Omaha, Nebr.; apples from eastern Nebraska, eastern Kansas, western Missouri, and portions of Iowa; strawberries from Kansas and Iowa; and melons from Nebraska and Iowa. Cabbage grown in Iowa is also beginning to be shipped under refrigeration. The shipments upon which reparation is asked moved: Two cars from Council Bluffs to Omaha, 2.8 miles; one car from Council Bluffs to Grand Island, Nebr., 146.9 miles; two cars from St. Joseph to Lincoln, Nebr., 200.6 miles; one car from St. Joseph to Grand Island, 238.7 miles; and seven cars from Wathena, Kans., to Grand Island, 246.3 miles. The refrigeration charges assailed were stated in amounts per car—\$35 per car for distances of 250 miles or less and \$40 per car for distances over 250 miles. These charges applied on all fruits and vegetables except melons, on which the charges were \$40 and \$45 per car for like distances. Formerly refrigeration charges in this territory were based on the amount of ice furnished, but complainant does not ask the restoration of this practice, its complaint being addressed to the quantum of the charges rather than to the method of their statement. The line-haul rates were not brought in issue.

Complainant directed attention to the disparity between the transportation charge of \$9 per car which resulted from a freight rate on grapes of 3 cents per 100 pounds, minimum 30,000 pounds, applicable to the two cars from Council Bluffs to Omaha, and the refrigeration charge of \$35 per car. Other comparisons offered by complainant were with three refrigeration charges from Benton Harbor, Mich., to Omaha, Lincoln, and Hastings, Nebr., of \$37.50, \$42.50, and \$45, for distances of 607, 652, and 746 miles, respectively; charges from and to points in the state of Colorado; charges from points in Utah to points in Colorado; and the charges levied on certain specific shipments from New York and Delaware to Sioux City, Iowa. The latter were based on the amount of ice furnished at \$2.50 per ton.

Complainant laid particular stress upon the charges for refrigeration from producing points in western Colorado to all points in that state, pointing out that freight rates in Colorado are generally higher than in the prairie states. On deciduous fruits, berries, grapes, and vegetables the charge was \$25 per car, with the provision that when shippers furnished release and no re-icing was required or furnished in transit the refrigeration charge would be \$20 per car. On melons

the charge was \$30 without the option of a release. These charges covered movements for distances as high as 525 miles. For defendants it was stated that these charges had been in effect for many years and that the Public Utilities Commission of Colorado had not permitted them to be increased; that they had resulted from competition between refrigerator lines; that one of these lines owned refrigerator equipment so constructed that the gratings in the bunkers could be adjusted to permit of half-tank refrigeration; and that the other line did not own cars so equipped, and had therefore been compelled to meet the half-tank charges in its charges for full icing. These Colorado charges were increased subsequent to the hearings in this case, and are now on the basis set forth in Perishable Protective Tariff No. 1, I. C. C. No. 6.

Defendants' comparisons include many charges for refrigeration of fruits and berries prevailing at the time of the hearing in different sections of the country, ranging from \$30 per car for a distance of 204 miles from Norfolk to Lynchburg, Va., to \$50 per car for a distance of 608 miles from Fayetteville, Ark., to Bushnell, Ill. They also submitted two cost studies. The first is an analysis of the cost of the refrigeration service as compared with the refrigeration revenue for a total of 16 carload shipments which were moved during the season of 1917 by the Pacific Fruit Express Company, not a defendant herein, from points in Kansas, Missouri, Iowa, and Nebraska to destinations in the same territory over the lines of defendants St. Joseph & Grand Island and Union Pacific railroads. The second is a similar analysis of 16 carload shipments, 14 made in 1917 and 2 in 1918, between stations in the states named over the lines of defendant Chicago, Rock Island & Pacific Railway.

In these studies use was made of arbitrary figures considered by us in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, and *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17. These are: So-called "bunker damage," \$5 per car; expense of switching at icing and re-icing stations, 25 cents per car for each switching movement; expense of supervision, \$3 per car; and cost of hauling ice at 1 cent per 100 pounds per 100 miles. To these four arbitrary items defendants add the cost of the ice in place in the car bunkers. The first study results in averages as follows: Distance hauled, 175 miles; pounds of ice placed in bunkers, 12,581; amount paid for ice so placed, \$26.42; pounds of ice carried from origin to destination, 8,960; average switching movements per trip, 1½. The average refrigeration revenue received was \$39.56 per car and exceeded the average total cost per car by \$3.23. The second study shows an excess of refrigeration revenue over cost for

the year 1917 of \$7.41 per car, and for the year 1918 a deficit of 32.5 cents per car.

The two cases above cited were decided in January, 1911, and October, 1914, respectively. Defendants say that since 1914 costs have so materially increased as to render low the arbitrary figures there used. They also point out that no allowance was made in their cost studies for hazard or profit. Evidence was submitted that for the year ended June 30, 1917, the Chicago, Burlington & Quincy Railroad paid \$38,500 in loss and damage claims on 2,682 cars of fruits and vegetables, \$24,953.95 of which was due to improper ventilation or refrigeration. In the *Perishable Freight Investigation*, *supra*, we stated at page 522 that carriers "are fairly entitled to a moderate margin over cost as an allowance for the factors of hazard and profit."

For certain of the cars included in the first study the initial icing was done at an ice house at St. Joseph on the tracks of the St. Joseph Terminal, a railroad owned by the St. Joseph & Grand Island and the Atchison, Topeka & Santa Fe. An exhibit prepared by defendants at complainant's request purports to show the method of arriving at the cost of this icing, as follows: In ice house on December 31, 1916, 926.33 tons of ice; put in during the year 1917, 3,073.67 tons; total ice, 4,000 tons; cost of these 4,000 tons, \$3,731.97; switching charges, \$315; labor of putting ice in house, \$832.46; and labor of putting ice in bunkers, \$1,543.26; a total of \$6,422.69. Of this stock of 4,000 tons, 1,573.95 tons were used in icing cars and 386.6 were on hand December 31, 1917, indicating a shrinkage of 2,039.45 tons, or slightly more than one-half of the ice. The amount left on hand and the amount used therefore cost \$3.28 per ton. Complainant contends that the cost thus shown is too high because it takes into consideration this shrinkage of over 50 per cent, and should not exceed the amount, \$2.50 per ton, paid by the Pacific Fruit Express Company to the defendants for the ice it consumed. Defendants insist that the showing represents the total used for all purposes except, possibly, a small quantity used for the icing of drinking water on passenger trains.

If we should assume for the purpose of this analysis that the shrinkage was only 25 instead of approximately 50 per cent, the corresponding cost figure would be reduced from \$3.28 per ton to \$2.14 per ton. Eight of the 16 cars in the first study would be affected by this change, with a resulting reduction in the average total cost to \$33.21 per car, or \$6.35 less than the average revenue. It was testified for the Chicago, Rock Island & Pacific that in 1917 it had a contract with a local ice company at St. Joseph to deliver ice in car bunkers at \$3.50 per ton, and that in 1918 the contract price was \$5.50.

The foregoing is in substance the statement of facts in the second proposed report by the examiner, in which he recommended that we should find that the charges in issue had been justified.

Upon February 28, 1920, Perishable Protective Tariff No. 1, I. C. C. No. 6, became effective, naming, among other charges, stated refrigeration charges in section 2 upon fruits and vegetables for country-wide application between designated origin and destination groups. Between the same points these charges are in some instances in excess of those assailed and likewise higher than those cited in comparison by complainant.

In *Wis. & Mich. Fruit & Vegetable Jobbers Asso. v. Ry. Co.*, 57 I. C. C., 249, in which we considered the refrigeration charges on fruits and vegetables from Chicago, Ill., to points in other states within a radius of less than 500 miles we said:

In *Perishable Freight Investigation*, *supra*, while expressing hesitation in reaching conclusions, in view of the character of the evidence submitted, it was stated that we did not find that the charges proposed in section 2, which have since become effective, were unreasonably related to the probable future cost of the service so far as the longer hauls were concerned. In the case of short-haul traffic "covering distances up to, say, 500 miles" we expressed the judgment that the charges proposed were "in excess of the probable future cost of service, including a moderate allowance for hazard and profit," but stated that the information was insufficient to enable us to specify amounts which would be reasonably related to cost. In connection with these charges, however, we recommended a new rule enabling shippers who do not require re-icing in transit to direct the initial icing, paying at the tariff rate per ton for the ice so supplied, or providing it themselves, and paying to cover the other factors of expense an additional charge ranging from a minimum of \$5 for hauls within a single origin group to 20 per cent of the stated charges for the longer hauls. This rule * * * was adopted and made rule No. 240 of the tariff which became effective on February 28, 1920 * * *.

The evidence in the instant case indicates that re-icing in transit is not generally required on the bulk of the shipments in which complainant is chiefly interested. By taking advantage of rule No. 240, therefore, complainant's members will find it possible in many, and perhaps in most, instances to secure refrigeration service for materially less than the stated charges, under an arrangement similar to the one which prevailed prior to September 20, 1917, except for the additional charge covering other factors of expense. Whether or not the present stated charges are reasonable, particularly for the shorter distances, it is obvious that this rule No. 240 has materially changed the situation to which the record in the present proceeding was directed, and that upon this record no finding can well be made in regard to the reasonableness of the charges which complainant's members will pay for refrigeration service upon the traffic in question.

What we said there applies with equal force to the situation under discussion, so far as charges for the future are concerned. The record indicates that it is in these charges that complainant is chiefly

interested, and it filed no exceptions to the examiner's recommendation that an award of reparation covering past shipments be denied. Defendants' cost studies leave much to be desired. For example, with respect to the arbitrary figures used, reliance is placed entirely upon *Arlington Heights Fruit Exchange v. S. P. Co.*, *supra*, and *Railroad Commission of California v. A. G. S. R. R. Co.*, *supra*, although both of these cases dealt with traffic hauled 2,000 miles or more. These factors of cost were considered at length in *Perishable Freight Investigation*, *supra*, wherein we found the use of 1 cent per 100 pounds for the hauling of the ice and 35 cents for each switching movement well within reason, and did not disapprove the use of \$5 for "bunker damage" and \$4 per car for supervision in connection with long-haul traffic, but held that these amounts were probably excessive for short-haul traffic such as that here considered.

Nevertheless, defendants have proved that the charges for refrigeration based on the amount of ice furnished which were succeeded by the charges in issue failed to take into consideration important factors entering into the cost of refrigeration service and that an increase was justified. As above stated, the line-haul rates were not brought in issue. Moreover, while their cost studies are open to criticism, upon the record as made we think that the preponderance of evidence is in favor of their contentions and that a conclusion that the charges assailed were unreasonable would not be warranted. Doubt chiefly attaches to the refrigeration charge of \$35 per car for the haul of 3 miles from Council Bluffs to Omaha. But this was a group charge applying over distances as high, in some cases, as 250 miles, and complainant concedes that the shipments in question could have moved the 3 miles safely under ventilation. Refrigeration was provided because it was requested. The use of the group system in the case of stated refrigeration charges is desirable, and we are not persuaded upon the record that there was reasonable need for smaller groups and lower charges to provide for short hauls of this character. The complaint will therefore be dismissed.

No. 6189.

RED ASH COAL COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted June 17, 1916. Decided May 3, 1920.

Reparation awarded on account of unreasonable rates charged for the transportation of anthracite coal, in prepared and pea sizes, in carloads, from Red Ash colliery, in the Wyoming coal region of Pennsylvania, to Elizabethport, N. J., for reshipment by water. Former report 37 I. C. C., 460.

*Robert D. Jenks and William A. Glasgow, jr., for complainant.
Jackson E. Reynolds and Charles E. Miller for defendant.*

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In its complaint, filed October 3, 1913, the complainant, a corporation engaged in mining and selling coal, alleged among other things that the rates charged by the defendant for the transportation of anthracite coal, in carloads, from its Red Ash colliery and other collieries in the Wyoming region of Pennsylvania to Elizabethport and Port Johnston, N. J., for reshipment by water, were unreasonable and unduly prejudicial. It asked reparation on shipments made by it subsequent to December 20, 1912. In our former report, 37 I. C. C., 460, we found that reasonable rates for the future from the coal region affected had been prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter called the *Anthracite Case*. The question of reparation was held in abeyance, and is the only issue remaining to be determined. Rates are stated herein in amounts per long ton of 2,240 pounds.

A subsequent hearing was held on April 28, 1916, for the purpose of affording complainant an opportunity to submit evidence concerning the shipments upon which it sought reparation. At this hearing, complainant submitted a detailed exhibit asking reparation on shipments of prepared and pea sizes which it had made from its colliery to its selling agents, Madeira, Hill & Company, at Elizabethport, during the period from February 20, 1913, to April 1, 1916, and on which it ultimately bore the freight charges at the then effective tariff rates of \$1.55 for prepared sizes and \$1.40 for pea size. No shipments were made to Port Johnston. In the *Anthracite Case* we found these rates to be unreasonable, and prescribed instead rates not

to exceed \$1.40 on prepared sizes and \$1.30 on pea and smaller sizes which rates became effective on April 1, 1916. Defendant contends that reparation should not be awarded on claims accruing after the date of the complaint, but it concedes the accuracy of complainant's exhibit filed on April 28, 1916.

The facts upon which complainant relies to establish the unreasonableness of the rates charged, and the defenses interposed by the defendant, are identical with those considered and disposed of in our recent report in *Meeker & Co. v. C. R. R. Co. of N. J.*, 57 I. C. C., 414. Following our decision in that case we are of opinion and find that the rates charged and collected by the defendant during the periods from December 20, 1912, to October 3, 1913, and from April 29, 1914, to April 1, 1916, for the transportation of complainant's shipments of anthracite coal, in prepared and pea sizes, in carloads, from the Red Ash colliery in the Wyoming region of Pennsylvania to Elizabethport, N. J., for reshipment by water were unreasonable to the extent that they exceeded rates of \$1.40 per long ton on prepared sizes, and \$1.30 per long ton on pea size, which we find would have been reasonable maximum rates for this service. Claims covering shipments on which freight charges were paid after October 3, 1913, and more than two years prior to April 28, 1916, are barred. We further find that during the above periods complainant made carload shipments of anthracite coal from its Red Ash colliery via the line of the defendant to Elizabethport, N. J., for reshipment by water; that said shipments aggregated 85,019.67 long tons, prepared sizes, and 1,119.04 long tons, pea size; that complainant ultimately paid and bore the freight charges thereon at the established rates of \$1.55 on prepared sizes and \$1.40 on pea size, which rates we find were unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$12,863.58 as principal, and \$1,165.17 as interest on the individual items comprising the principal, from the dates of payment thereof to April 1, 1916, together with interest at 6 per cent per annum on the principal sum of \$12,863.58 from April 1, 1916.

An order awarding reparation will be entered.

No. 7560.

HENRY E. MEEKER, TRADING AS MEEKER & COMPANY,
v.
ERIE RAILROAD COMPANY ET AL.

Submitted April 21, 1915. Decided May 3, 1920.

1. Rates on anthracite coal, pea size, in carloads, from Wayne washery, Clemo, Pa., to Undercliff (Edgewater), N. J., for reshipment by water found to have been unreasonable. Reparation awarded.
2. Rates on sizes smaller than pea from and to the same points found not unreasonable, unjustly discriminatory, or unduly prejudicial.

Robert D. Jenks, William A. Glasgow, jr., and John A. Garver for complainant.

George F. Brownell and H. A. Taylor for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is an individual engaged in the coal business under the name of Meeker & Company, with an office at New York, N. Y. By complaint filed December 9, 1914, he alleged that the rates charged by the defendants for the transportation of anthracite coal from Wayne washery, Clemo, Pa., to tidewater at Undercliff (formerly Edgewater), N. J., for reshipment by water, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated herein in amounts per long ton.

Clemo is on the Wyoming division of the Erie Railroad on the eastern slope of the Pocono Mountains, 138 miles from Undercliff and 33 and 25 miles, respectively, east of Avoca and Dunmore, Pa., concentration points on the Erie for shipments from the Wyoming anthracite region. The Wyoming region lies west of the Pocono Mountains and shipments from the concentration points above named when destined to tidewater are transported over these mountains and pass through Clemo. There are no coal mines on the eastern side of the Pocono Mountains. The source of the coal supply at Clemo was an abandoned railroad embankment or fill built many years ago out of what was then regarded as waste material from the mines in the Wyoming region. In later years the use of smaller sizes of coal and improved methods of washing made the material used in this embankment merchantable. The Wayne Coal Company

leased the fill, erected a washery, and began operation in June, 1912, and in August, 1914, it had exhausted the supply of coal. During the operation of the washery complainant purchased the output thereof at prices f. o. b. washery. There is no possibility of further shipments, and complainant's interest in this case is with respect to reparation only.

The shipments consisted entirely of pea and smaller sizes. They moved over the lines of the defendants during the period from January 3, 1913, to August 31, 1914, inclusive. Complainant paid charges thereon at the applicable rates of \$1.45 for pea size, \$1.30 for buckwheat, and \$1.15 for smaller sizes. These rates were the same as those applicable from the mines on the Erie and its connections in the Wyoming region. Complainant's testimony was confined largely to a comparison of the operating conditions between Clemo and the Wyoming region to tidewater. He contends that the rates from Clemo should have been materially lower than from the Wyoming region because of the shorter distance from Clemo and because the operating conditions between Clemo and tidewater are more favorable than between the Wyoming region and tidewater. Defendants concede that on shipments to tidewater Clemo occupies a favorable location, but contend that there were special circumstances attending the transportation of complainant's shipments which offset this advantage. Thus, they assert, it was impracticable to handle cars to or from Clemo in the trains which handled the coal cars to and from the mines in the Wyoming region. They point out that this would have required on the loaded movement the running of coal trains from the concentration points at less than full tonnage in order to pick up the cars at Clemo, as well as the maintenance of a car inspector at that point or the subsequent cutting out of the cars from Clemo for inspection; while, on the movement of empty cars to Clemo for loading, the construction of the tracks and the nature of the terrain prevented the switching in of the cars by the engines carrying empties to the Wyoming region. Instead, therefore, it was found more economical to handle the cars between Clemo and the Erie's main-line division terminal at Port Jervis, N. Y., in local freight trains, the loaded cars requiring three such movements and the empty cars two. Further, defendants point to the fact that the advantage of location is not in favor of Clemo on westbound coal shipments, where longer hauls are required than on shipments from the Wyoming region, but on which the same rates applied. They also state that on traffic, other than coal, eastbound to New York, N. Y., and westbound as far as Buffalo, N. Y., Clemo takes generally the same rates as Scranton, Pa., and other points located in the Wyoming region.

In *Rates for Transportation of Anthracite Coal*, 35 I. C. C., 220, we found that the defendants' rates for the transportation of anthracite coal from points in the Wyoming region, or taking Wyoming region rates, as named in Erie tariff I. C. C. No. D-662 to Undercliff, for reshipment by water, were unreasonable to the extent they exceeded \$1.45 on prepared sizes and \$1.35 on pea and smaller sizes. As pointed out at page 226 of that report, blanket rates are applied generally from all collieries on the lines of the various carriers serving the Wyoming and other Pennsylvania anthracite regions "although the distance between the collieries in the group may be 50 miles more or less," and we are not convinced that the application of the Wyoming region basis to the transportation of coal from Clemo was unreasonable, or that it subjected complainant to unjust discrimination or undue prejudice.

Following the case cited, and upon the facts of record, we are of the opinion and find that the rate of \$1.45 per long ton charged by the defendants for the transportation of complainant's shipments of anthracite coal, pea size, in carloads, from Wayne washery, Clemo, Pa., to Undercliff (formerly Edgewater), N. J., was unreasonable to the extent that it exceeded \$1.35 per long ton, which rate we find would have been reasonable for this service. We find further that during the period from January 3, 1913, to August 31, 1914, inclusive, complainant made shipments of anthracite coal, pea size, in carloads, as above described; that he paid and bore the charges thereon at the rate herein found to have been unreasonable; that in the payment of said charges he has been damaged by the defendants to the extent that the charges so paid exceeded those that would have accrued at the rate herein found reasonable for this service; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined from the record and the complainant should comply with rule V of the Rules of Practice.

The rates assailed on sizes smaller than pea were not found to have been unreasonable in *Rates for Transportation of Anthracite Coal*, *supra*, and the evidence submitted on this record is insufficient to warrant a different finding. Accordingly, we further find that the rates charged on complainant's shipments of sizes smaller than pea were not unreasonable, unjustly discriminatory, or unduly prejudicial.

HALL, *Commissioner*, concurring:

For reasons stated in my expression appended to the report in *Plymouth Coal Co. v. P. R. R. Co.*, 56 I. C. C., 699, at 709, I concur in the foregoing report.

No. 10887.

GULF PIPE LINE COMPANY OF OKLAHOMA

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted February 27, 1920. Decided May 3, 1920.

Rate on wrought-iron pipe, in carloads, from Beaumont, Tex., to Midian, Kans., found not unreasonable or otherwise unlawful. Complaint dismissed.

Joseph C. Beck and C. B. Ellis for complainant.

Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was made and served upon the parties. No exceptions were filed.

Complainant, a subsidiary of the Gulf Oil Corporation, is engaged in the handling of crude oil through pipe lines in the states of Oklahoma and Kansas. By complaint filed September 16, 1919, it alleges that the rate on new wrought-iron pipe from Beaumont, Tex., to Midian, Kans., a distance of approximately 895 miles, was and is unreasonable and unduly prejudicial. Reparation on six carloads, shipped September 21 and 22, 1917; and the establishment of a reasonable rate for the future are sought. Rates will be stated in cents per 100 pounds.

Charges were collected at the applicable fifth-class rate of 75 cents. Complainant contends that this rate was unreasonable to the extent that it exceeded 37.5 cents. It shows that when the shipments here before us moved, there were in effect commodity rates of 35 cents from Electra, Tex., to points in Kansas City territory, including Midian, and 32.5 cents from Beaumont to Fulton, Ark., which were 50 per cent of the fifth-class rates contemporaneously applicable between the groups in which the points named are located. The approximate distance from Electra to Kansas City is 568 miles, and from Beaumont to Fulton 307 miles. The reasons for the establishment of these commodity rates are not shown of record. Apparently they were the only contemporaneous northbound commodity rates on wrought-iron pipe from nonproducing territory that com-

plainant was able to locate. The commodity rate from Electra was canceled February 20, 1920.

Complainant shows contemporaneous rates on the same commodity of 59.1 cents from the Pittsburgh, Pa., district to Kansas City territory, and 27.5 cents from points in Kansas City territory to Beaumont, and that the rate from the Pittsburgh district to Beaumont was a differential of 19.1 cents over the last-named rate. The west-bound rates from the Pittsburgh district, which carry a large volume of traffic, are not fairly comparable with the rate here in issue.

That this was an emergency shipment is clear from the testimony of complainant's principal witness that ordinarily the pipe could have been obtained from mills in the Pittsburgh district, from which the 59.1-cent rate applied, but owing to war conditions the Pittsburgh mills were unable to supply it and complainant was compelled to make the shipments from its warehouse at Beaumont. It was also testified that future shipments from Beaumont were improbable.

No attack is made upon the classification of wrought-iron pipe, nor is it contended that the class rate, as such, was unreasonable. Through inadvertence defendants were not represented at the hearing. They express their willingness to submit the case upon the testimony of complainant. The fifth-class rate assailed was increased to 94 cents on June 25, 1918, under General Order No. 28 of the Director General of Railroads, and a commodity rate of 50 cents on wrought-iron pipe, new or secondhand, was established from and to these points on May 31, 1919. These rates are still in effect. No evidence was offered bearing upon the reasonableness of the existing commodity rate.

Upon this record we find that the rate assailed was not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

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No. 10561.
CUMBERLAND GLASS MANUFACTURING COMPANY
v.
DIRECTOR GENERAL AND CENTRAL RAILROAD COMPANY
OF NEW JERSEY.

Submitted August 22, 1919. Decided May 3, 1920.

Demurrage charges at Minotola and Bridgeton, N. J., on certain interstate shipments of bituminous coal, not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

Harold S. Shertz and Edward C. Taylor for complainant.
Alexander H. Elder for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of glass products, with plants at Minotola and Bridgeton, N. J. By complaint seasonably filed, as amended, it alleges that demurrage charges amounting to \$4,603, collected on certain interstate shipments of bituminous coal at Minotola during February and March, 1917, and at Bridgeton during March, July, and August, 1917, were unreasonable. The measure of the charges is not in issue, and the sole question for determination is whether demurrage was properly assessable under the circumstances. Reparation is asked.

Complainant contends that the car detention was caused by defendants in making repairs to trestles from which coal is unloaded within complainant's plants. Both plants were under average demurrage agreements. Within each of these plants complainant has trackage facilities for unloading raw material and trestles for unloading coal. The trestles at both plants, although located on land owned by the complainant, were constructed and are owned by the Central Railroad Company of New Jersey, hereinafter referred to as the defendant, which is solely responsible for keeping them in repair without contribution from complainant.

Within the Minotola plant there was trestle capacity for unloading eight cars daily. In January, 1917, oral notice was given by defendant to complainant that this trestle was in need of repair, followed, on February 8, by written notice that the work would be commenced

within two weeks, the notice being given, as stated therein, to enable complainant to regulate its coal shipments and avoid delay to cars while repairs were under way. The work was begun on February 19 and completed on March 9, but use of the trestle was not interfered with except from noon of February 27 to noon of the following day, and three days in March.

Within the Bridgeton plant there are four trestles with an unloading capacity of about 20 cars, all of which were in need of repair in 1917, one having been condemned. Work was begun first on the latter and it was out of service only from April 10 to 12, inclusive. Work on the second trestle was completed on June 23 without interference with its use. The third trestle is 360 feet long and has a capacity of eight cars. When defendant was ready to commence work thereon it was unable to proceed as it wished because about one-third of the trestle at the approach end was choked by an accumulation of coal which had overflowed on an adjoining track, preventing the use of that track. The work began on June 25 and was completed on August 2, necessitating closing the trestle for a number of days during the month of July. The work, however, was so arranged that complainant had full access to the trestle for unloading cars every week end from Friday night until Monday noon. Repair of the fourth trestle did not interfere with complainant's use of it at any time. Defendant carried on the repair work in such a manner, although hampered by shortage of labor, as to leave open at all times for the use of complainant at least three of the four trestles, with sufficient unloading capacity in the aggregate to take care of all ordinary coal shipments for that plant.

The condition of the coal market during 1917 was described of record as "chaotic." The production of coal, already below normal, was decreasing while the market price was advancing and at the same time there was a car shortage. It is stated that no one could tell from the amount of coal on order how much would be received, and it was the practice of manufacturers at that time to place orders in excess of their requirements with a number of coal companies in the hope of securing a sufficient supply. Complainant, like other users of coal, was endeavoring to secure its supply from any available source. From February 19 to March 15, while the trestle repairs were under way, there arrived at the Minotola plant 68 cars of bituminous coal, whereas from February 1 to 19 but 12 cars had been received. Being unable, as it states, to unload all of these cars promptly at Minotola, the complainant ordered a number of cars reconsigned to its Bridgeton plant, but because conditions at the latter plant delayed unloading beyond the free time allowed demurrage was collected and the amount thereof is included in the total claim for reparation.

During July 78 cars reached the Bridgeton plant, 27 cars on one day. With the aid of additional switching service furnished by defendant, complainant unloaded 16 cars on that day. During June, July, and August, 1917, it received at its Bridgeton plant 108 cars of soft coal, while during the same months of 1918 it received only 35 cars. Notwithstanding its knowledge that repairs were to be made to the trestles, complainant continued to place orders for bituminous coal in excess of its normal requirements. The number of cars reaching the plants during the period in question was at times unusual and in excess of the facilities regularly available for unloading. The record shows that during a large part of July and practically all of August the greater part of the trestle facilities, with a daily unloading capacity of 19 or 20 cars, was available at the Bridgeton plant for the use of complainant without interference due to repair work, but only on seven days during this period were more than four cars released.

Defendant contends that the failure to unload the equipment promptly was due to the negligence of complainant, in not making proper use of the trestles and other track facilities within the plants for unloading; that the coal could have been unloaded at points within the plants other than at the trestles; and that the coal could have been accepted, like that of other shippers, on public team tracks about one-quarter mile and one-half mile distant from the Minotola and Bridgeton plants, respectively, or at public coal trestles located a short distance from the Bridgeton plant. Ample notice was given complainant of its intention to undertake the work, which it says it completed with the least possible delay and in such manner as to interfere as little as possible with complainant's facilities for receiving and unloading coal. In the complaint it is stated that the causes of delay "were all beyond the control of both the complainant and defendant, and although both parties did everything possible under the circumstances to prevent, it was beyond their power to do so." The evidence is clear that no negligence may be imputed to defendant. On behalf of complainant the contention is made that everything possible was done to unload the coal promptly; that it was not practicable under all the circumstances to accept coal other than at the trestles; that to have used other tracks would have interfered with the receipt and shipment of other inbound and outbound commodities; and that it had no facilities enabling it to accept the shipments on team tracks.

From all of the facts we find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act, or to have been unlawfully asserted.

An order will be entered dismissing the complaint.

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No. 10545.

UNITED STATES CAST IRON PIPE & FOUNDRY
COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, ALABAMA GREAT SOUTHERN
RAILROAD COMPANY, ET AL.

Submitted December 16, 1919. Decided May 3, 1920.

Complainant maintains a system of tracks within its plant at Bessemer, Ala., and performs, with its own power, the switching and spotting service incident to the weighing, unloading, and loading of inbound and outbound traffic. Upon complaint alleging that the performance by defendants of like switching and spotting services at other similar industries in the Birmingham, Ala., switching district without charge therefor, results in undue preference of those industries and unreasonable and undue prejudice to complainant, both in the switching service and transportation rates; *Held*, That the operations performed by complainant are not such as defendants could or should be required to render and therefore nothing for which compensation or allowances should be paid. The services accorded by defendants to the alleged preferred industries are entirely dissimilar to those performed by complainant within its plant. Complaint dismissed.

Wilmer M. Wood, Evans Browne, and Britton & Gray for complainant.

W. A. Northcutt for defendants.

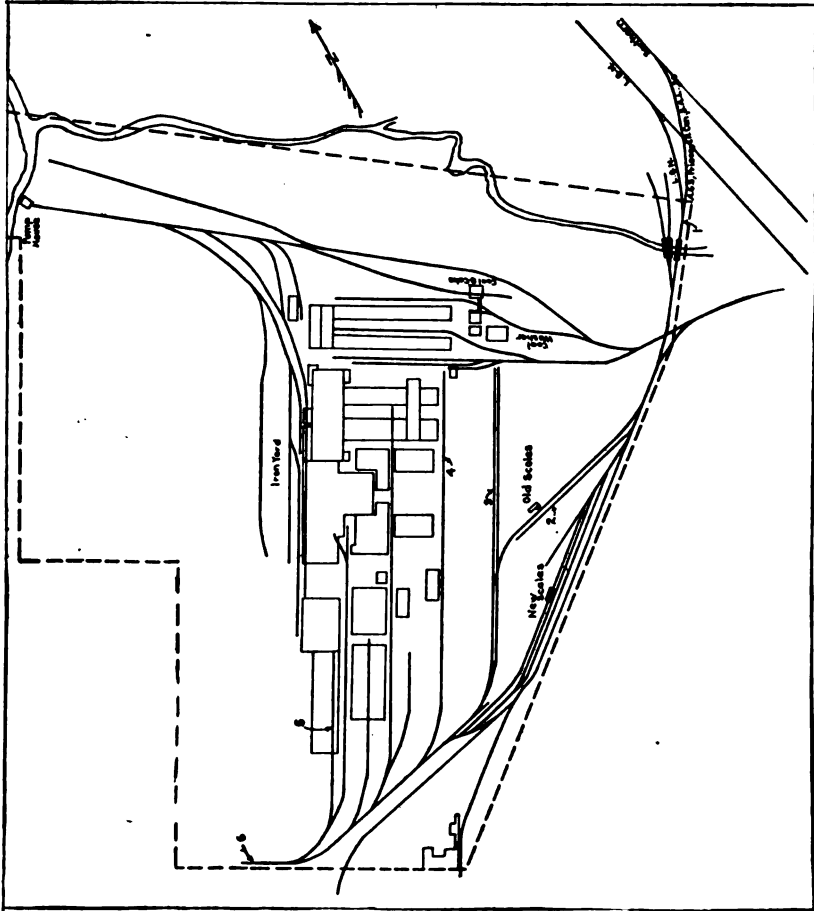
REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

Complainant, a corporation, maintains a plant at Bessemer, Ala., within the Birmingham, Ala., switching district, for the manufacture of cast-iron pressure pipe, fittings and connections, and special castings; it also operates therein 100 beehive coke ovens for the production of coke for its own use and for sale. Within the plant area is an intricate system of standard-gauge tracks, aggregating approximately 26,000 feet, which connect the various operations. The accompanying map shows the situation. It will be noted that the plant is reached through a common gateway, indicated on the map by the figure 1, by the Louisville & Nashville Railroad and by a joint track over which the Alabama Great Southern Railroad, now a part of the Southern Railway system, the Illinois Central

Railroad, the St. Louis-San Francisco Railway, the Seaboard Air Line Railway, and the Southern operate.

Complainant's principal traffic consists of coal, pig iron, scrap iron, limestone, and sand, inbound, and cast-iron pressure pipe, fittings, connections, special castings, and coke, outbound. Carload shipments are delivered and received by the trunk lines on certain



tracks inside of the plant, from and to which they are switched by complainant's motive power and crew to and from the various unloading and loading points, of which there are about 25. In addition to a standard-gauge locomotive with which complainant performs this switching and also its intraplant service, it owns 25 flat, gondola, or coke-rack cars, which are used exclusively in intraplant service. It is estimated that 55 per cent of the time of its engine and crew is employed in the handling of traffic received from and

delivered to the defendants and the remainder in plant work. The tracks and equipment are operated solely as an adjunct of the plant; the railway is not incorporated as a common carrier, nor does it serve any shipper other than complainant.

Complainant now performs, and since 1899 has performed, the services above described at its own expense. When the plant was started by complainant's predecessor, in 1890, it had only one track, but as it grew more tracks were laid and internal switching operations begun. In the construction of the track system no advice was sought from the defendants as to its suitability for the performance of switching by the trunk lines. Defendants say that complainant's predecessor told them that the track scheme was designed for operation by plant power and would not let them operate within the plant inclosure except to and from the interchange track.

The complaint in this proceeding, filed March 31, 1919, alleges that it is and for many years has been the general practice of defendants in the Birmingham district to switch cars to and from loading and unloading points upon spur or industrial tracks without charge therefor in addition to the Birmingham line-haul rates; that, as complainant has performed the switching and spotting service on its plant tracks and has received no allowance therefor from defendants, it has been subjected to undue prejudice and unlawful inequality of treatment to the preference of other industries similarly situated; and that, by reason of such practices, unreasonable, unjustly discriminatory, and unduly preferential charges have been imposed upon it. By amendment to the complaint, filed in response to a motion of defendants, the following preferred industries were specified: National Cast Iron Pipe & Foundry Company, Dolcito Junction, Ala., hereinafter termed the National company; Central Foundry Company, Bessemer, Ala., hereinafter termed the Central company; Stockham Pipe & Fittings Company, East Birmingham, Ala., hereinafter termed the Stockham company; and Continental Gin Company, Avondale, Ala., and East Birmingham, all within the Birmingham switching district. We are asked to direct defendants in the future to pay an allowance for the switching and spotting service rendered by complainant, and to award reparation for all such service performed within the two-year period prior to the filing of the complaint. At the hearing the complaint as to defendant Birmingham Railway Light & Power Company was withdrawn.

A description of the movements incident to the delivery of inbound traffic and the receipt of outbound traffic by the Louisville & Nashville will typify the manner of handling, with the exception of deliveries made at night after the gates of the plant are closed, which will be hereinafter detailed. The interchange of

traffic is effected on the tracks immediately adjoining what is designated on the map as the "old scales." The stub-end track, indicated by the figure 2, is principally used. When this track is full the cars are placed on the track marked "new scales" or on the tracks which parallel it. From the point at which defendants' rails enter complainant's plant, indicated by the figure 1, to the space at which cars are left at point 2, is approximately 1,200 feet. The distances by rail from point 1 to the various loading and unloading points range from 2,500 to 6,050 feet. Inbound cars of coal, delivered by defendants at point 2, are pulled by complainant's engine eastward until the switch connecting with the track leading to the old scales is cleared, then pushed westward to these scales for weighing. It is then necessary for the engine to uncouple, proceed back eastward beyond the same switch point, thence westward over the extreme lower track adjacent to the southern boundary of the plant to a clearance of the switch leading to track designated 3, thence eastward again through another switch connecting the track on which the coal cars are set for weighing. After being weighed the cars are pushed eastward and down the tail track, appearing at the bottom of the map, to a clearance of the switch, thence they are pulled northward on the extreme right-hand track in the direction of the "pump house." When the switch of the track leading back to "coal & coke" is cleared the cars are pushed up an elevated track and the coal is unloaded and run into the coal washer. The movement of cars left on the lower tracks adjoining the new scales is the same, except that the circumnavigation of the engine to reach the east end of the cut of cars is obviated. Inbound cars of pig iron, scrap iron, etc., require substantially the same movement, except for a longer haul up the track leading to the pump house in order to clear the switches of the tracks leading to the iron yard and other unloading places.

The outbound movements of pipe are not so complicated and no weighing is required, though a switchback is necessary to reach the tracks designated 3 and 4. Outbound shipments of special castings, loaded on track 5, require movements to the end of the tail track, designated 6, clear of the switch and thence to the point of delivery to the trunk lines. The space between the switch and the end of the tail track permits the handling of but one car at a time. This condition also exists in the placement of empty cars for loading. Empty coal cars are moved from the coal washer back to the old scales, where they are weighed and then handled to the point of interchange.

After the gate of the plant is closed the Louisville & Nashville's night shift places loaded coal cars on its track just outside of the
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plant. This placement is not considered a delivery as the cars are later moved to the interchange tracks, although during the night or on the following day complainant's engine frequently draws these cars to the scales for weighing and thence to the coal washer.

From 60 to 80 per cent of the time of complainant's engine and crew is devoted to the switching and spotting of cars for weighing. Inbound coal shipments are weighed for billing purposes and the weights thus obtained are certified to the carriers as a basis for freight charges. It was testified that, even though the cars were weighed by the line-haul carriers, they would be reweighed at the plant scales. Commodities other than coal are weighed solely for the purposes of the plant.

Complainant ships pipe fittings and special castings to all parts of the United States in competition with other industries in or near the Birmingham district, from which the rates of transportation are the same to all markets. The general practice of selling cast-iron pressure pipe is either f. o. b. destination or f. o. b. the plant with freight allowed to destination. Complainant therefore contends that it is disadvantaged to the extent of the expense of switching and spotting within its plant, inasmuch as similar services are performed by defendants for its competitors without charge.

Complainant insists that there is no material difference between the layout of its tracks and those of the National company, except that the latter are less extensive. Defendants switch cars to and from the points of unloading and loading at the National plant without charge. This is likewise true at the plants of the Central, Stockham, and Continental Gin companies. The latter manufactures cotton-ginning machinery and is not in competition with complainant. At the Stockham plant a switchback movement is necessary to effect deliveries. Complainant also operates a similar plant at North Birmingham, served by the Southern, the Louisville & Nashville, and the Birmingham Belt Railway, and another plant at Anniston, Ala., located on the lines of the Southern and the Louisville & Nashville. At both plants the interchange switching and spotting is performed by the carriers without charge in addition to the line-haul rates. These industries are not among those alleged in the complaint to be preferred.

Complainant introduced figures representing the cost of all switching and spotting in connection with the handling of inbound and outbound loaded and empty cars. The periods embraced are nine months of 1917, the full year of 1918, and five months of 1919. For the first period the per-car cost was \$1.69, for the second period \$2.37, and for the third period \$3.61. Reparation is sought upon these bases. For the future complainant seeks an allowance from de-

defendants based upon the actual cost of service rendered, to be determined monthly.

Defendants insist that there is no unjust, unreasonable, or prejudicial treatment of complainant, in comparison with either the general practice in the Birmingham district or with the practices at the alleged favored industries; that no duty rests upon them, either to render to complainant such service as it now performs for itself or to pay it the cost thereof; that the interior switching and spotting movements are purely for complainant's benefit and interest, and not such as carriers are expected to perform as a part of their contracts of transportation; and that their obligation does not extend beyond delivery and acceptance of carload freight at a reasonable point of interchange, which obligation always has been and now is being fully performed.

They assert that the weighing by complainant of inbound loaded coal cars and outbound empties resulted from complainant's demand that it be accorded the benefit of destination weights, both in the purchase of coal and in the payment of freight charges, and that no substantial benefit accrues to defendants from the arrangement. It is contended that complainant's track arrangement does not permit of straight movements to loading and unloading places, but requires from one to four switchback operations in every instance, and that over many of the track curves defendants' switch engines could not run without derailment or risk thereof. There are 68 curves in the plant tracks, ranging from 5 to 41°. Any curve greater than 12° is said to be dangerous, though it appears that the 20° curve encountered in reaching complainant's plant over the lead tracks has never so proved. Defendants claim that it would be impossible for the individual trunk lines to perform these switching and spotting services without greatly impeding the work of the plant. It is therefore argued that they are for complainant's own convenience and necessary to the economical conduct of its business; that they are entirely apart from the line-haul transportation; and that complainant is entitled to no compensation for their performance. It does not appear that complainant has ever requested defendants to perform these services with their own power.

In the Birmingham switching district there are many industries, similar to complainant's, which switch interchange cars with their own power over plant tracks for loading and unloading and receive no allowances therefor from their trunk line connections. There are also numerous industries within that district where defendants perform at their convenience ordinary switching and spotting services. The industries alleged to be preferred, defendants say, fall within the latter class, and are typical of thousands of such situ-

ations throughout the country. Ordinary straight switch movements only are necessary at these plants except at the Stockham company's plant, where, due to what is said to be a temporary war-time arrangement, a switchback is required. It appears that in moving cars to and from the interchange track at complainant's plant defendants perform a switching service similar to that which is rendered at the plants alleged to be preferred.

In support of their contentions defendants refer to *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237, and *Solvay Process Co. v. D., L. & W. R. R. Co.*, Id., 246. In the former case we held that:

* * * carriers are under no duty to extend their transportation obligations with the extension of great industrial plants like that of the complainant. They can not be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. Their obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange. In our judgment the complainant does nothing within its plant which it can lawfully call upon the defendants to do for it and therefore nothing for which it may lawfully demand compensation.

The record shows that the switching, spotting, and weighing operations in question are performed by complainant for its own convenience and benefit and are not a part of the transportation service which defendants could or should be required to render, and therefore nothing for which compensation or allowances should be paid. Moreover, the services accorded by defendants to the alleged preferred industries are unlike those performed by complainant within its plant since nothing more than an ordinary switching movement is involved. In all material respects these movements resemble those to and from the interchange tracks within complainant's plant.

EASTMAN, Commissioner:

In his proposed report, which was served upon the parties, the examiner stated the facts substantially in accordance with the foregoing, and recommended that we should find that the allegations of the complaint have not been sustained. To this report the complainant filed exceptions, principally to the proposed conclusions. It also asked that the hearings be reopened, claiming that the examiner had disregarded evidence as to its North Birmingham and Anniston plants, where switching and spotting services involving switchback movements are performed by the defendants without charge in addition to the line-haul rates, upon the ground that these two plants were not named in the pleadings. This request was denied. So far

as the industries are concerned which were named in the complaint, as amended, the examiner's proposed conclusions are supported by the facts as well as by the authorities cited. With respect to the North Birmingham and Anniston plants, which were not named in the amended complaint, while the record does not clearly show the character of the services there performed by defendants, complainant can hardly be heard to say that it suffers undue prejudice because two of its own plants are more favorably treated than another. Defendants are performing at complainant's Bessemer plant all the service that they can reasonably be required to perform, whatever may be the situation at its North Birmingham and Anniston plants. We therefore find, as the examiner proposed, that complainant has not been and is not now subjected to unlawful inequality of treatment or to unreasonable or unduly prejudicial rates of transportation by reason of defendants' refusal to make allowances to it for the cost of the switching and spotting service performed by complainant.

An order dismissing the complaint will be entered.

No. 10917.

CURRIE & CAMPBELL

v.

DIRECTOR GENERAL, WESTERN MARYLAND RAILROAD
COMPANY, ET AL.

Submitted February 9, 1920. Decided May 3, 1920.

Demurrage and towage charges collected on a carload of lumber in New York harbor found to have been legally applicable and not unreasonable or otherwise unlawful. Complaint dismissed.

William S. Phippen for complainants.

Henry Wolf Bickl  for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MCCORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainants are Ben C. Currie and James H. Campbell, copartners engaged in the wholesale lumber business at Philadelphia, Pa., under the firm name of Currie & Campbell. By complaint seasonably filed they allege that demurrage and towage charges exacted in New York harbor by the Pennsylvania Railroad on a carload of chestnut lumber shipped from Tigheview (Weaver), W. Va., to Brooklyn, N. Y., were unjust, unreasonable, and unjustly discriminatory. Reparation only is asked.

The shipment moved to Cumberland, Md., via the Western Maryland Railroad on October 2, 1916, under a bill of lading which consigned it to "Currie & Campbell, Bushwick, Sta., Eastern Dist. Term., Brooklyn, N. Y., C. R. R. of N. J. delivery," and which showed the mail address of the consignee as "(Phila., Pa.)." It was held at Cumberland because of an embargo of the terminal carrier. Before the car left point of origin and also while it was in transit complainants attempted to secure from the Central Railroad of New Jersey a permit for its delivery to Ferguson & Clarke, Brooklyn, eastern district terminal, but because of the embargo that carrier advised complainants that the car could not be accepted for that delivery. Complainants then made efforts to secure a permit from the Pennsylvania Railroad. On October 13, after a permit had been

issued by the Pennsylvania to forward the car to Ferguson & Clarke, Wallabout dock, Brooklyn, complainants instructed the Western Maryland at Cumberland to bill the car to Wallabout dock, but did not ask that the name of the consignee be changed. On the same date they sent a telegram to the shippers at point of origin advising them of the action taken, but neither the letter nor the telegram contained any reference to the fact that the car as reconsigned was for Ferguson & Clarke.

The car moved to Jersey City via the Pennsylvania, where it arrived October 30. For reasons not disclosed, it remained at Jersey City until December 5, at which time it was transferred to a lighter and reached Wallabout dock on December 13. As the car was consigned to Currie & Campbell, located in Philadelphia, the captain of the lighter was unable to find the consignee and so notified the agent of the Pennsylvania, who, on December 13, telegraphed complainants at Philadelphia advising them that the lumber was on hand at Wallabout dock and that demurrage would begin to accrue on December 15. Complainants deny having received this telegram. A second telegram was sent on December 18, to which complainants replied the same day, requesting that the car be delivered to Ferguson & Clarke. This request was received by the agent on the morning of December 19, but as demurrage had accrued and as Ferguson & Clarke had been instructed by complainants not to pay demurrage, delivery of the car was not accomplished at that time, whereupon it was lightered back to Jersey City. After an exchange of correspondence and telephone conversations between the railroad agent and complainants, the car was again lightered to Wallabout dock, on December 26, and was released to Ferguson & Clarke on December 29. Demurrage in the sum of \$210, and an extra towage charge of \$9, had accrued on the shipment on and after December 15. The measure of the charges is not assailed. While it is alleged that the charges collected were unreasonable and unjustly discriminatory, the only evidence offered was directed to the legality of their assessment.

Complainants contend that defendant Pennsylvania should have notified them of the arrival of the car at Jersey City before it was transferred to the lighter; that as the permit issued by that carrier showed that the car was for Ferguson & Clarke it was the carrier's duty to have changed the billing accordingly, and that its failure to do so is the proximate cause of the demurrage and towage charges. The applicable tariff provided that all carload shipments for delivery in New York or Brooklyn locally which are not consigned to a specific station will be held until written orders for disposition are received from the consignee or the party notified of arrival. The tariff makes

no provision for notice of arrival when shipments are consigned to a specific station, but it is the practice for either the captain of the lighter or a "runner" to attempt to notify the consignee in such circumstances.

It is apparent from the record that the failure of complainants to request defendants to change the name of the consignee at the time instructions were given to the Western Maryland to bill the car to Wallabout dock, together with the refusal of Ferguson & Clarke to release the car prior to December 29, were the primary and proximate causes of the demurrage and towage charges.

We find that the charges assailed were legally applicable and that such charges were and are not unreasonable or otherwise unlawful.

The complaint will be dismissed.

57 I. C. C.

No. 10923.

DR. KILMER & COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, DELAWARE, LACKA-
WANNA & WESTERN RAILROAD COMPANY, ET AL.

Submitted February 11, 1920. Decided May 3, 1920.

Rates on medicines, in carloads, from Binghamton, N. Y., to Chattanooga and Memphis, Tenn., found to have been unreasonable to the extent that they exceeded the aggregate of the intermediate rates subject to the interstate commerce act contemporaneously in effect over the routes of movement to and from Cincinnati, Ohio, and Cairo, Ill., respectively. Reparation awarded and measure of reasonable maximum rates prescribed.

Henry C. Olmsted for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

This case was made the subject of a proposed report by the examiner who heard the evidence. No exceptions thereto were filed.

Complainant is a corporation engaged in the manufacture and sale of drugs, medicines, and chemicals at Binghamton, N. Y. By complaint filed September 29, 1919, it alleges that the rates charged by defendants for the transportation of six carloads of medicines from Binghamton to Chattanooga and Memphis, Tenn., during the period between March 22 and June 18, 1918, both inclusive, were unreasonable and unjust to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect over the routes of movement. The prayer is for reparation, including a refund of alleged excess war taxes paid, and the establishment of reasonable charges for the future. Rates are stated in amounts per 100 pounds.

Five of the shipments, aggregating 180,461 pounds, moved over the defendants' lines from Binghamton to Chattanooga via Cincinnati, Ohio. Charges were collected in the sum of \$2,309.90 at the applicable joint first-class any-quantity rate of \$1.28. The remaining shipment, weighing 25,448 pounds, moved over defendants' lines from Binghamton to Memphis via Cairo, Ill., and charges thereon were

collected in the sum of \$277.38 at the applicable joint first-class any-quantity rate of \$1.09. The intermediate rates contemporaneously in effect via the routes of movement were 40 cents from Binghamton to Cincinnati and 76 cents from Cincinnati to Chattanooga; and 53.5 cents from Binghamton to Cairo, and 38 cents from Cairo to Memphis. The last-named factor is subject to a minimum weight of 30,000 pounds. A minimum of 24,000 pounds subject to rule 27 of the official classification, is applicable upon the other factors. These violations of the intermediate clause of the fourth section were not protected by application or otherwise, and were and are unlawful. They should be promptly removed.

We have repeatedly held that a through rate which exceeds the aggregate of the intermediate rates subject to the interstate commerce act is *prima facie* unreasonable. The defendants were not represented at the hearing, but by letter of record agreed to remove the fourth section violation and expressed willingness to pay the reparation claimed.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that from Binghamton to Chattanooga and Memphis they exceeded, exceed or may exceed the aggregate of intermediate rates subject to the interstate commerce act contemporaneously in effect to and from Cincinnati and Cairo, respectively. We further find that the complainant made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should comply with rule V of the Rules of Practice. We are without power to order refund of war taxes.

An appropriate order for the future will be entered.

57 I. C. C.

No. 10122.

STANDARD TIME ZONE INVESTIGATION.

Submitted February 17, 1920. Decided May 18, 1920.

1. Petition to modify orders defining limits of standard Central and Mountain time zones, 51 I. C. C., 273 and 555, so as to include the panhandles of Texas and Oklahoma within standard Central time zone, denied.
2. Order defining limits of standard Eastern time zone, 53 I. C. C., 208, modified so as to include Mount Vernon, Ohio, within the standard Eastern time zone.

Frank R. Jamison and *Hamlin Palmer* for Panhandle-Plains Chamber of Commerce; and *William B. Estes* for Board of City Development of Amarillo, Tex.

F. V. Studer for Chamber of Commerce, Canadian, Tex.; *A. J. Shaller* for City Council, Canadian, Tex.; *A. D. Spencer* for Crosbyton and Ralls, Tex., and Young Men's Business League of Crosby County, Tex.; *Newton P. Willis* for Swisher County, Tex.; *J. E. Sweptson* for Young Men's Business League of Swisher County, Tex.; *C. H. Martin* for Northwestern Oklahoma Banking Association; *B. E. Hill* and *H. R. Kent* for Moreland, Okla.; *E. T. Adair* for Dalhart, Tex., Chamber of Commerce; *Rex Nordyke* for Texhoma, Tex., Chamber of Commerce; *F. A. Sewell*, *F. A. Blake*, *C. J. Stilwell*, and *E. B. Clark* for Texas County, Okla.; *J. L. Pope* and *J. S. Blaisdell* for Chamber of Commerce of Woodward, Okla.; and *L. Brant* for retail clerks of Amarillo, Tex.; *W. H. Fuqua* for Amarillo banks.

F. Livermore for Fort Worth & Denver City Railway Company; *N. J. O'Brien* for Kansas City, Mexico & Orient Railroad Company and William T. Kemper, receiver, and Kansas City, Mexico & Orient Railway Company of Texas; *H. L. Reed*, *C. H. Hubbell*, and *H. E. McMullen* for Chicago, Rock Island & Pacific Railway Company and Chicago Rock Island & Gulf Railway Company; *B. S. Hollimon* for Southern Pacific lines; *E. H. Sears* for Atchison, Topeka & Santa Fe Railway Company; and *A. F. Lumpkin* for Medical Association of Potter County, Tex.

SUPPLEMENTAL REPORT OF THE COMMISSION.

ATCHISON, Commissioner:

A report in the above-named proceeding on which was based an order defining the limits of the various United States standard

time zones is to be found in 51 I. C. C., 273, and modifications thereof are reported in 51 I. C. C., 499 and 555, and in 53 I. C. C., 208. The order issued in connection with the original report and with the supplemental report in 51 I. C. C., 555, defined the boundary line between the standard Central time zone and the standard Mountain time zone in such a way as to place the panhandle of Texas, except the southeast corner thereof, in the Mountain time zone. Prior to the effective date of our order issued in connection with the original report, Central time was observed in the panhandle of Texas as well as in all other portions of that state. On December 1, 1919, the Panhandle-Plains Chamber of Commerce, Amarillo, Tex., filed a petition which, as amended at the hearing, asked that our orders heretofore entered herein be so modified as to place the panhandle of Texas and panhandle of Oklahoma in the standard Central time zone. This matter now comes on upon the rehearing granted, and all parties have been heard.

The act to save daylight and to provide standard time for the United States, approved March 19, 1918, provides that for the purpose of establishing the standard time of the United States, the territory of continental United States shall be divided into five zones, and that the standard time of the several zones "shall be based" on the mean astronomical time of certain meridians of longitude west from Greenwich. The standard times of the second or Central time zone and of the third or Mountain time zone by law are based on the mean astronomical time of the meridians of 90 and 105 degrees west, respectively. The act also provides that the limits of each zone shall be defined by an order of this Commission, having regard for the convenience of commerce and the existing junction points and division points of the common carriers engaged in commerce between the several states and with foreign nations, and that such order may be modified from time to time.

In orders already entered, fixing the dividing line between the Central and Mountain time zones on the line between Oklahoma and Texas, we were governed by these provisions of law. On account of the location of the division points and junction points of the common carriers in that territory it was impracticable to fix the boundary line between the Central and Mountain time zones on the median meridian, 97 degrees and 30 minutes west of Greenwich, and the dividing line was therefore fixed as closely as practicable to the median meridian so as to provide standards of time approximating as closely as may be the mean solar time of the zones. The dividing line as now fixed, in the territory here in question, is on the 100-degree meridian as far south as Childress county, Tex.; thence west to about the 101-degree meridian, thence southerly to Arion county,

Tex., and thence easterly through San Angelo, Tex., to the meridian of 100 degrees west, which meridian it follows to the boundary between the United States and Mexico. The panhandle country of Texas and Oklahoma is between 100° and 103° west, and the extension of the limits of the Central time zone so as to include these territories would fix the western boundary thereof along the Eastern boundary of New Mexico, or along the 103-degree meridian. If the zone boundary were so fixed it would be necessary to authorize the Chicago, Rock Island & Pacific Railroad to operate under Central time to Tucumcari, N. Mex., which is about 103 degrees and 45 minutes west of Greenwich, or within about 5 minutes in time from the meridian upon which is based the standard time for the Mountain time zone. It would also be necessary to include within the Central time zone the western triangle of Texas to and including El Paso, in order that the Southern Pacific and the Texas & Pacific railways could change time there, as El Paso is the only point west of Big Springs and Del Rio, Tex., where it would be practicable for these carriers to change time. El Paso is about 106 degrees and 30 minutes west of Greenwich or 6 minutes in time west of the standard meridian upon which standard Mountain time is based. Such an adjustment would result in the Central time zone, instead of being 60 minutes wide in time, being 82 minutes in time wide on the parallel of latitude 36° north and about 90 minutes wide just below the parallel 32° north. As a practical matter, the change would necessarily reflect itself in western Kansas, and perhaps in western Nebraska. The result of granting the relief asked for by the present petition is clearly shown by the following comparison: If standard Eastern time were observed as far west of its governing time meridian as is El Paso from the governing meridian of the Central zone, Eastern time would be observed in Natchez, Miss.

At the rehearing, witnesses for various business and commercial interests testified that the observation of a different standard of time at Amarillo from that observed at Fort Worth and Dallas, Tex., Kansas City, Mo., and other eastern centers with which they have business dealings, caused inconvenience, and they expressed a preference for a time faster than mean solar time. The opposition to the proposed change was based on the fact that it would result in providing a standard of time for this territory that would be from 40 to 52 minutes ahead of mean solar time, whereas standard Mountain time in that territory is but from 20 to 8 minutes behind such time. Central time at El Paso would be 1 hour and 6 minutes ahead of mean solar time.

As will be seen by our original report herein, 51 I. C. C., 277, portions of the states of Nebraska and Colorado practically due north 57 I. C. C.

of that here in question were originally in the Central time zone, but, for cause shown, and with the consent of the interested parties, were transferred to the Mountain zone.

We do not conceive it to be within our discretion to adjust the zone boundaries with the avowed purpose of providing a community with a fast or slow time, particularly as the intent of Congress has been unmistakably evidenced by the repeal of the daylight savings or advanced-time section of the act. To change the limits of a time zone to effectuate such purpose would result in seriously distorting the several zone boundaries, which should coincide as nearly as is reasonably practicable with the respective median meridians, having regard for the convenience of commerce and the existing junction and division points of interstate common carriers. The desire of banking and mercantile business to have their standard of time the same as that of their principal correspondents is natural; but, if carried out without regard to the time meridians, in the manner here proposed, would result in the whole country being placed in one time zone.

It appears that much inconvenience is suffered by people living in Oklahoma between Waynoka on the Atchison, Topeka & Santa Fe Railway and Sayre on the Chicago, Rock Island & Pacific Railroad and the zone boundary on the Oklahoma-Texas state line. In granting to these carriers the right to operate between those division points and the state boundary under Mountain time it was the understanding and expectation of the Commission that they would in their published advertisements, their time cards, bulletin boards in stations, and in other like ways show the arrival and departure of their trains with reference to the standard of time prescribed for use in the various communities. The observation by these carriers of the above requirement will remove much discomfort and inconvenience to the people of that section.

Upon consideration of the whole record in this case, including the facts developed in our previous investigations as well those brought out upon this rehearing, and upon consideration of the obvious purpose and intent of Congress as shown in the acts relating to standard time, we are of opinion that the petition should be denied.

In the supplemental report in this proceeding, 53 I. C. C., 208, we defined the boundary line between the Eastern and Central time zones in such a way as to pass through Mount Vernon, Ohio, and prescribed Central standard time for that municipality. The City Council of Mount Vernon has shown by resolution that it is for the best interests of that city that it be included in the standard Eastern time zone. Mount Vernon is served by the Baltimore & Ohio Railroad and the Pennsylvania lines, both of which operate under stand-

ard Eastern time. The change requested will not conflict with other provisions of the orders heretofore entered, and we are of the opinion that the change should be made for the greater convenience of commerce.

An appropriate order will be entered.

No. 10924.

W. S. DICKEY CLAY MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY, ET AL.

Submitted February 11, 1920. Decided May 3, 1920.

Charges on mixed carloads of sewer segment blocks and hollow building tile from Deepwater, Mo., to points in Oklahoma and other states found unreasonable. Reparation awarded on two mixed carloads from Deepwater to Chickasha, Okla., and defendants required to provide for the transportation of mixed carloads of these commodities at the higher rate and minimum weight applicable to either commodity.

W. D. Wells for complainant.

Fred C. Dumbeck for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the proposed report.

The complainant, W. S. Dickey, who manufactures clay products at Deepwater, Mo., under the name of W. S. Dickey Clay Manufacturing Company, by complaint seasonably filed alleges that the freight charges applicable under defendant St. Louis-San Francisco Railway Company's tariff I. C. C. No. 7200, to the movement in mixed carloads of sewer segment block and hollow building tile from Deepwater to Chickasha, Okla., and other points on defendant carriers' lines as provided in said tariff, were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded charges which would have accrued upon the

basis applicable to the article having the higher minimum. The rate is not assailed. Reparation is asked on two mixed carload shipments that moved May 4 and 8, 1918, from Deepwater to Chickasha, and the establishment of reasonable charges for the future.

The two shipments weighed 55,700 and 53,400 pounds, respectively. They moved over the defendant carriers' lines and freight charges of \$234 were collected at a rate of 13 cents per 100 pounds, applicable on each commodity, based on an aggregate weight of 180,000 pounds. Defendants' tariff did not and does not provide rates for "mixed" carloads of these commodities from Deepwater to Chickasha or other destinations named therein. The aggregate weight upon which the charges were collected was arrived at by applying the established minimum carload weight provided for each commodity—50,000 pounds on sewer segment blocks and 40,000 pounds on hollow building tile, or 90,000 pounds per car.

Sewer segment blocks and hollow building tile are both clay products and are of the same character of construction. The two articles are used together in the construction of culverts, and for this reason complainant finds it desirable to ship them in mixed carloads. The only reason offered by defendants for not permitting the mixture of these commodities upon the basis sought is that the rates from Deepwater are too low. This is no justification for the denial of a mixing provision.

In the *Consolidated Classification Case*, 54 I. C. C., 1, we recommended the establishment of a rule providing that charges on mixed carload shipments shall be based on the carload rate applying on the highest-rated article and subject to the highest minimum weight attaching to any article in the load.

We do not find that the charges assailed were or are unjustly discriminatory or unduly prejudicial, but we do find that the charges applicable under St. Louis-San Francisco Railway Company's tariff I. C. C. No. 7200, to the transportation of hollow building tile and sewer segment blocks, in mixed carloads, from Deepwater, Mo., to Chickasha, Okla., and other points named in said tariff on the lines of defendant carriers, were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed charges assessable on the basis of the higher carload rate and the higher minimum carload weight on either commodity. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those which would have accrued upon the basis herein found reasonable; and that he is entitled to reparation in the sum of \$92.17, with interest.

An appropriate order will be entered.

No. 10580.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, EAST BROAD TOP RAILROAD &
COAL COMPANY, ET AL.

Submitted August 26, 1919. Decided May 3, 1920.

1. Change of destination in transit of certain cars of bituminous coal on orders of United States Fuel Administration found to have constituted a diversion.
2. Defendants' diversion rule in so far as excluding bituminous coal in hopper or self-clearing cars of defined ownership found to have been unreasonable at the time of movement of complainant's shipments.
3. Reparation awarded.

H. S. Farrow for complainant.

Henry Wolf Bickel for Director General of Railroads, Pennsylvania Railroad Company, and West Jersey & Seashore Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

Complainant is a corporation engaged in the manufacture of explosives. By complaint filed April 1, 1919, it alleges that the rate of \$3.30 per long ton charged on certain shipments of bituminous coal, in carloads, from mines in the state of Pennsylvania, diverted at Enola, Pa., to Carney's Point, N. J., in November and December, 1917, were unreasonable, unjustly discriminatory, and in violation of the fourth section of the act to regulate commerce. Reparation only is asked, including an amount equal to the war-revenue tax on the alleged unreasonable portion of the freight charges. The defense was assumed by the Pennsylvania Railroad, the line principally interested, and hereinafter referred to as defendant. Rates will be stated in amounts per long ton.

During the war complainant consumed large quantities of bituminous coal in the manufacture of powder at its Carney's Point plant, operated continuously day and night. Its product was sold to the government at a fixed price per pound. Although it had contracts with mines for its supply of coal, the contracts were based upon its

operations before the war, with a two-shift working day. When continuous operation became necessary in order to supply the government with powder it was obliged to arrange for more coal. The mine operators under contract with complainant were unable to increase their shipments because of various conditions resulting from the war, and complainant appealed to the United States Fuel Administration for a supply of coal sufficient to keep its plant in operation. The Fuel Administration, acting through the Commission on Car Service of the American Railway Association, thereupon directed the defendant to deliver at complainant's plant at Carney's Point 5,000 tons of bituminous coal destined to tidewater. Defendant accordingly transported to Carney's Point certain cars originally consigned to tidewater from mines in Pennsylvania on the lines of defendant carriers, the change in billing being effected at Enola, a classification yard of the defendant. Complainant paid charges thereon at rates of \$3.30 and \$3.40, the sum of the intermediate rates to and from Enola. The factor of \$1.85 assessed from Enola to Carney's Point is alleged to violate the long-and-short-haul clause of the fourth section in that it exceeded the rate of \$1.80 applied from more distant points. The latter rate was published under authority of rule 77 of our Tariff Circular 18-A, and was thus in substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C., & St. L. Ry. Co.*, 41 I. C. C., 602.

Complainant seeks reparation to the basis of joint through rates of \$1.80 and \$1.90 applicable from the mines to Carney's Point, in connection with which a rule provided, in substance, for the free diversion of coal where no out-of-line haul was necessitated and the diversion was accomplished before the car reached original destination.

Defendant contends that under these circumstances the cars moved from Enola as new shipments by the Fuel Administration, entirely independent of the movement to Enola, and that, even if regarded as diverted, the cars were hopper cars and defendant's tariff then in effect provided that its diversion and reconsignment rules—

will not apply on shipments of bituminous coal which are loaded in hopper or self-clearing cars of the following ownership—

followed by a list of carriers which included the owners of these cars.

In *Doran & Co. v. N., C. & St. L. Ry.*, 33 I. C. C., 523, 527, in explaining the nature of the services of diversion and reconsignment, we said:

Reconsignment, although often referred to as a privilege, is primarily a service in connection with the transportation of property. An accurate conception of what is meant by the term is afforded by Conference Ruling No. 72 (c), which states that "without specific qualifications the term reconsignment

includes changes in destination, routing, or consignee." Diversion is the same as reconsigning except that the destination is changed prior to the arrival of the shipment at the original billed destination. The service differs in no material respect whether a specific through rate or a combination rate is applied. The total charges payable by the shipper may or may not be affected by the reconsignment. Whether the charges are increased is determined by the manner in which the rates are adjusted and whether the carrier provides in its tariffs for a diversion or reconsignment charge in addition to the rate.

It is a common incident of diversion or reconsignment that instructions for the change in destination, routing, or consignee are given by some one other than the original shipper, especially where the property is moving under order bills of lading. Upon the facts of record we find that the cars were diverted.

We have repeatedly said that where the contents of the car remain unchanged, where the change of destination or route does not necessitate an out-of-line haul, and request is made in reasonable time, reconsignment and diversion on the basis of the through rate from point of origin to new destination, with a fair charge for the extra services performed, are reasonable practices; that denial thereof is unreasonable and unlawful, and that we have power to require their establishment. *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114; *Doran & Co. v. N., C. & St. L. Ry.*, *supra*. Carriers throughout the country, including defendant, at the present time divert cars in transit at a charge of \$2 per car, the existing rules being the outgrowth of our criticism of the carriers' proposed rules in the *Reconsignment Case*, 47 I. C. C., 590.

In justification of the exclusion of bituminous coal in hopper or self-clearing cars of defined ownership, from the reconsignment and diversion provisions of defendant's tariff, its witness testified that early in the summer of 1917 it became evident that the western states could not be adequately supplied with coal for the following winter unless special provision was made to maintain the car supply for mines furnishing that coal; that most of this coal moves by lake; that hopper-bottom or self-clearing cars are especially adapted to the handling of lake cargo coal; and that the Commission on Car Service, acting on behalf of the carriers, directed that cars of this character, when unloaded, be immediately returned to the owning road, and also instructed the carriers to issue tariffs withdrawing the diversion privilege in connection with this type of car. The diversion tariff above mentioned was accordingly published, and was made effective on less than 30 days' notice under special authority granted by us. The exclusion was not canceled until January 7, 1918, although tariffs filed with us show that lake navigation officially closed—by which is meant that rail-and-lake rates in general were suspended, and the right of shippers to demand transportation via the lake routes

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was thus abrogated—in November, 1917, prior to the dates on which these shipments originated. With the official close of lake navigation the reasons supporting tariff exclusion of bituminous coal in hopper cars from its diversion provisions no longer existed. Defendant insists that there was a movement via the lakes in the early part of December, 1917, but such a movement was at best sporadic and does not alter the situation. The exclusion was unusual and denied a service which we have recognized that shippers may demand. Reasonable diligence by defendant in changing its diversion tariff would have resulted in the restoration of the diversion service to correspond with the general withdrawal of rail-and-lake rates.

Under all the circumstances and conditions of this case we find that defendant's diversion rule was unreasonable at the time these shipments moved and that a reasonable rule would have provided for diversion of these cars of bituminous coal in hopper or self-clearing cars at the through rates applicable from the mines to Carney's Point, plus a diversion charge of \$2; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued had the rule herein found reasonable been in effect; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should comply with rule V of the Rules of Practice. We have no power to order refund of war taxes.

No. 10602.¹

PROCTER & GAMBLE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted August 18, 1919. Decided May 3, 1920.

Import rate of \$1.125 per 100 pounds on copra, in carloads, from San Francisco and Oakland, Calif., and Seattle, Wash., to Ivorydale, Ohio, Houston and Dallas, Tex., and Port Ivory, Staten Island, N. Y., found to have been unreasonable to the extent that it exceeded 85 cents. Reparation awarded.

H. Ignatius, J. A. Morgan, F. A. Leffingwell, R. F. Isbell, and Huggins & Kayser for complainants.

O. W. Dynes, D. L. Myers, and Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MCCORD, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant in No. 10602 is an Ohio corporation engaged in crushing copra, refining vegetable oils and manufacturing lard substitutes and soap, with factories at Ivorydale, Ohio, and Port Ivory, Staten Island, N. Y. By complaint filed April 28, 1919, it alleges that the import rate of \$1.125 charged on various carloads of copra shipped from San Francisco, Calif., and Seattle, Wash., to Ivorydale, within the switching district of Cincinnati, Ohio, and to Port Ivory, within the lighterage limits of New York harbor, between July 1 and September 16, 1918, was unreasonable and unduly prejudicial to the extent that it exceeded the import rate of 85 cents subsequently established from and to the points named. Reparation only is asked. The International Vegetable Oil Company, one of the complainants in No. 10507, is a corporation of Georgia engaged in the manufacture of vegetable oils with plants at Houston and Dallas, Tex. By complaint seasonably filed it seeks reparation on 33 carload shipments of copra made during July and August, 1918, from San Francisco and Oakland, Calif., to its Texas plants, alleging that the \$1.125 import rate assessed was unreasonable to the extent that it exceeded the rate of 85 cents subsequently established.

¹ This report also includes No. 10507, Chamber of Commerce, Houston, Tex., et al. v. Director General.

These two cases present like issues and will be disposed of in one report, rates being stated throughout in amounts per 100 pounds.

Copra is the dried meat of the coconut and is imported from the south Pacific islands. Crushing of copra in this country was begun after the entry of the United States into the world war. Prior thereto that industry was practically confined to Europe. The products of copra are coconut oil, which is edible, and an oil cake, which is ground into meal for animal feed. A ton of copra yields about 65 per cent coconut oil and 30 per cent oil cake, leaving 5 per cent waste. At the time of the hearings the value per pound of copra was about 7.5 cents, of coconut oil about 16 cents, and of copra cake or meal about 2 cents. The tonnage from the Pacific coast ports is said to have been substantial both before and after the movement of the shipments here before us. Some of the shipments were made in bulk, some in bags, and all moved over defendant carriers' lines. Charges were collected at the applicable import commodity rate of \$1.125, minimum 40,000 pounds.

Prior to June 25, 1918, the import rates on copra, in carloads, minimum 40,000 pounds, from Pacific coast ports, including San Francisco, Oakland, and Seattle, were 75 cents to group A destinations, in eastern Canada, New England, New Jersey, Pennsylvania; Delaware, Maryland, Virginia, West Virginia, and New York, including Port Ivory; 65 cents to group B destinations; 60 cents to group C destinations, in Alabama, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Tennessee, and Ohio, including Ivorydale; and 55 cents to destinations in groups D, E, F, G, H, and J. Group F comprised points in Arkansas, Iowa, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas, including Houston, and group H points in New Mexico, Oklahoma, and Texas, including Dallas. The contemporaneous import rates on coconut oil, in carloads in packages, minimum 40,000 pounds, were 60 cents to group A and 55 cents to all other groups, and in tank cars, minimum full shell capacity of tank, 65 cents to group A, 60 cents to group B, 58 cents to group C, and 55 cents to all other groups; and on coconut-oil cake and meal 75 cents to groups A, B, and C, and 60 cents to all other groups. Under General Order No. 28 of the Director General of Railroads the import rates were canceled, rendering applicable fifth-class rates of \$2.375 to Port Ivory, \$2.25 to Cincinnati, and \$2 to Houston and Dallas on copra, class B rates on coconut-oil cake and meal and domestic commodity rates on coconut oil. The domestic commodity rates on coconut oil in packages, minimum 40,000 pounds, in effect on June 25, 1918, including the increase of 25 per cent, were 81.5 cents to group A, and 75 cents to all other groups; and in tank cars, minimum full shell capacity of tank, 87.5 cents to group A, and

81.5 cents to all other groups. The grouping of destination points to which these domestic rates were applicable is slightly but not materially different from the grouping of destinations to which the import rates had applied. Effective July 1, 1918, an import rate of \$1.125 was established on copra, and on coconut oil in packages, minimum 40,000 pounds, and in tank cars, minimum full shell capacity of tank, from the Pacific coast ports to destinations in the blanket territory roughly described as east of a line drawn north and south through Denver, Colo., and embracing all of the destination groups to which the former import rates were applicable. This rate was also published as a domestic rate on coconut oil in packages or tank cars, but was not made applicable to domestic shipments of copra or to domestic or import shipments of coconut meal or cake. Due to the dissatisfaction which arose from the establishment of the same rate on copra that applied on the manufactured product, the Director General reduced the rate on copra to 85 cents, effective September 16, 1918. Effective May 29, 1919, the import rate on coconut oil was reduced to 90 cents.

To show that the rate charged was unreasonable complainant in No. 10602 cites rates on various commodities from Seattle and San Francisco to Cincinnati, based on a short-line mileage figured by complainant at about 2,480 miles, as follows:

Commodity.	Minimum.	Rate.	Earnings per ton-mile.
	<i>Pounds.</i>		<i>Mills.</i>
Copra.....	40,000	\$1.125	9.1
Bagging.....	40,000	.85	6.9
Coffee, green.....	80,000	.80	6.5
Vegetable oils.....	40,000	1.125	9.1

Similar rates to New York, N. Y., with relatively lower earnings are cited. Complainant contends that the earnings at the 85-cent rate compare favorably with those on vegetable oils and coffee, and that the average loading, 71,500 pounds, of complainant's shipments from San Francisco yields car-mile earnings of 32.21 cents to Cincinnati and 25.58 cents to Port Ivory, the latter one of the most distant points in the large blanket territory to which the rate applies. These earnings are substantially higher than those realized on any of the commodities shown in comparison. At the 85-cent rate the average earnings would have been \$607.75 per car, and the car-mile earnings 24.5 cents to Cincinnati and 19.3 cents to Port Ivory. The undue prejudice alleged is the imposition on copra of an undue share of the rate increase made by the Director General on all commodities.

Complainant in No. 10507 shows that for the average distance of 2,157 miles on the shipments to Houston and Dallas under the \$1.125 rate the average earnings were 10.4 mills per ton-mile, and based upon the average car loading of 70,237 pounds, the car-mile earnings were 36.6 cents and the car earnings \$790.16. At the 85-cent rate the average earnings would have been, respectively, 7.9 mills, 27.7 cents, and \$597.01. Comparisons are made with rates on other commodities from San Francisco to Houston ranging from 56.5 to 94 cents. The value of some of these commodities, such as dried beans, green coffee, and other foodstuffs, as well as certain low-grade products, is stated to be approximately the same as that of copra. The earnings under these comparative rates, at the estimated average loadings, are in each instance less and generally materially less than the earnings at the rate under attack.

For defendants it was testified that the average loading of copra from north and south Pacific coast ports for a period of a year was 60,000 pounds. Based upon this loading the earnings under the \$1.125-rate and the 85-cent rate would be as follows:

From San Francisco to—	Miles.	Rate.	Earnings per car.	Earnings per car-mile.
				<i>Cents.</i>
Cincinnati.....	1 2,480	\$1.125 .85	\$675 510	27.22 20.56
New York.....	1 3,144	1.125 .85	675 510	21.47 16.23
Houston and Dallas.....	1 2,157	1.125 .85	675 510	31.29 23.64

¹ Short-line distance.

² Average of all cars shipped.

The average of these car-mile earnings would be 26.66 cents under the \$1.125-rate and 20.14 cents under the 85-cent rate.

Defendants deny that under any recognized principle copra should be accorded a lower rate than coconut oil. They state that the establishment of the 85-cent rate was the result of an effort to encourage the importation of raw material for manufacture in this country, and that the reduction in rate was a voluntary concession which did not in any way carry with it the admission that the \$1.125 rate was unreasonable or that reparation was justified on shipments which moved prior to the establishment of the 85-cent rate.

They contend that the rate charged was reasonable in comparison with the following contemporaneous import rates from Pacific coast ports to Ivorydale and Port Ivory: \$1.875 on chinaware, glassware, matting, and tea; \$1.565 on gums, licorice root, and rubber; \$1.125 on cassava flour, palm kernels, coconut and cottonseed oils, sago, tapioca, and potato flour; and 94 cents on dried peas, dried beans,

and hemp. They made many other comparisons of commodities with minimum weights ranging from 24,000 to 60,000 pounds, and referred to substantially higher westbound rates from and to the points named on the same commodities. Many of these commodities are finished products with varying hazards of transportation not incident to copra, but on the other hand they move in substantial volume. Defendants observe that the \$1.125 rate was a blanket rate applying to an extensive territory and that the average earnings under that rate were from Seattle 9.247 mills per ton-mile and 18.49 cents per car-mile, computed on the minimum weight of 40,000 pounds, and from San Francisco 9.807 mills per ton-mile and 19.61 cents per car-mile, to Denver, Colo.; Houston, Tex.; Chicago, Ill.; St. Louis, Mo.; New Orleans, La.; Cincinnati and Cleveland, Ohio; Pittsburgh, Pa., and Port Ivory. Computed on an average weight of 60,000 pounds, the car-mile earnings would be 50 per cent higher.

Defendants further contend that copra should not be considered a raw material and accorded a rate lower than that applying on coconut oil made therefrom. They cite *Chamber of Commerce of Houston, Tex. v. S. P. Co.*, 49 I. C. C., 316, wherein we found that peanuts, being largely used in their natural form and in food and confectionery, were not entitled as a raw material to a lower rate than peanut oil. It does not appear that copra is used in its natural form or that it is anything other than the raw material used for the production of coconut oil with copra cake as a by-product. In the case cited it was shown that the average loading of peanuts for the year ended January 31, 1917, was 30,940 pounds. As above stated, the average loading of copra for the period of a year was 60,000 pounds.

Defendants admit that copra is easier to handle than oil in tank cars and is less susceptible to damage. The relation, if any, which should exist between the rates on copra and on coconut oil can not be determined on these records.

In *Procter & Gamble Co. v. C., C. & St. L. Ry. Co.*, 47 I. C. C., 231, decided November 13, 1917, we found that the rate on coconut oil from San Francisco to Ivorydale, on shipments which moved between June 10 and November 16, 1915, was unreasonable to the extent that it exceeded 58 cents and awarded reparation. The import rates on copra in effect on June 24, 1918, from the Pacific coast ports averaged 63.75 cents to all destination groups, which, increased by 25 per cent, would be 79.5 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 85 cents per 100 pounds; that the complainant shippers made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference

between the charges paid and those that would have accrued at the rate herein found reasonable and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on these records, and each of the complainant shippers should comply with rule V of the Rules of Practice.

War taxes in excess of those which would have accrued on the basis of the rates found reasonable were collected on the shipments. We are without power to order refund of these excess taxes.

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No. 10619.

OZARK COOPERAGE & LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY, ET AL.

Submitted August 25, 1919. Decided May 3, 1920.

Rate legally applicable on gum staves, in carloads, from Pascola, Mo., and Success, Ark., to Houma, La., found to have been unreasonable. A reasonable maximum basis for the future prescribed and reparation awarded.

George B. Webster for complainant.

Denegre, Leovy & Chaffe and *Harry McCall* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

Complainant is a corporation engaged in the purchase and sale of cooperage stock at St. Louis, Mo. By complaint seasonably filed it alleges that the charges collected for the transportation of four carloads of gum staves, one from Pascola, Mo., and three from Success, Ark., to Houma, La., in July, August, and September, 1918, were illegal to the extent that they exceeded those which would have accrued at a rate of 44 cents, and that the rate legally applicable was unreasonable and unduly prejudicial to the extent that it exceeded the rate contemporaneously in effect on lumber from and to the same points. Reparation, including an amount for alleged excess war taxes, and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipments consisted of slack barrel gum staves and moved over the lines of the St. Louis-San Francisco Railway to Memphis, Tenn., Illinois Central Railroad to New Orleans, La., and Morgan's Louisiana & Texas Railroad & Steamship Company, hereinafter termed the Morgan line, beyond. Charges of \$443.63 were collected on the shipment from Pascola and one shipment from Success, aggregating 84,500 pounds, at a rate of 52.5 cents, and \$466.14 on the other two shipments, aggregating 91,400 pounds, at a rate of 51 cents, these sums being exclusive of war taxes also collected. The allegation that a rate of 44 cents was legally applicable is not supported by the tariffs.

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No joint rate applied over the route of movement and the lowest combination was 51.5 cents, composed of a commodity rate of 21.5 cents on lumber and articles taking the same rates, including staves, from both points of origin to New Orleans, and the class D rate of 30 cents beyond, governed by the western classification. Two shipments were undercharged 0.5 cent per 100 pounds and the other two were overcharged 1 cent per 100 pounds, resulting in a net overcharge of \$3.88.

The contemporaneous rate on lumber over the route of movement was 31 cents, composed of commodity rates of 21.5 cents to New Orleans and 9.5 cents beyond. While the reasonableness of the through rate is put in issue, complainant's attack is more particularly against the 30-cent component from New Orleans to Houma. It contends that this component should not exceed the rate contemporaneously applicable on lumber in carloads. Prior to June 5, 1911, the rate on lumber from New Orleans to Houma also applied on staves, but on that date staves were eliminated from the list of articles taking lumber rates. That list, however, continued to include various lumber products such as baseboards, bed slats, ceiling, flooring, lath, pickets, shingles, tank material sawed to shape, well tubing, and wainscoting, and these articles are included in the list at the present time. Complainant's witness testified that since November, 1916, it has been the general practice of the carriers in this territory to maintain lumber rates on cooperage stock, and that the only exception is on interstate traffic between New Orleans and points on the Morgan line. Many tariffs were cited in support of this statement. On March 11, 1913, lumber rates were restored on "rough staves," but this description did not cover the commodity in question, which is termed "slack cooperage stock."

Complainant's exhibits show that when the shipments moved the following rates applied on cooperage stock, including staves: 19 cents from Marked Tree, Ark., and Parkin, Ark., to New Orleans, 430 and 425 miles, respectively; 22.5 cents from Little Rock, Ark., to points on the Morgan line for comparable distances; 27.5 cents from Springfield, Ill., and Indianapolis, Ind., to New Orleans, 838 and 899 miles, respectively; and 25 cents from Vincennes, Ind., to New Orleans, 786 miles. The legally applicable rate over the route of movement yielded ton-mile earnings of 18.29 mills from Pascola, 563 miles, and 17.52 mills from Success, 588 miles. The rates compared therewith in the majority of instances yield slightly more than 6 mills per ton-mile.

For defendants it was testified that the normal basis for manufactured slack barrel staves is Class D, and that they were so classified in the western classification and exceptions applicable in south-

western territory when these shipments moved. Irrespective of the classification it appears that where there is any substantial movement the same commodity rates on staves as on lumber were and are in effect. Defendants contend that the commodity rates on lumber between points in Louisiana are abnormally low for reasons beyond their control, and that such rates should not be used in making a through rate on slack cooperage stock from and to the points in question.

Some testimony was introduced tending to show undue prejudice against complainant in favor of New Orleans jobbers because the intrastate rate on staves from New Orleans to Houma was lower than the interstate rate, and it is said that other points in Louisiana were favored.

In *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, 619, decided April 7, 1919, we had under consideration the relationship, but not the reasonableness, of rates on lumber and its products, and found that carriers should observe lumber rates as maxima in fixing rates on slack and tight barrel cooperage stock, including staves.

We find that the rate legally applicable from Pascola, Mo., and Success, Ark., to Houma, La., was 51.5 cents per 100 pounds, and that the shipments made were overcharged accordingly; and that the rate legally applicable and here assailed was, is, and for the future will be unreasonable to the extent of its excess over the rate contemporaneously maintained by defendants on lumber, in carloads, from and to the same points. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$364.48, with interest. We are without power to order refund of war taxes.

An appropriate order will be entered.

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No. 10746.

CARON & CAMPBELL

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

Submitted February 17, 1920. Decided May 3, 1920.

Rates on hogs, in carloads, from Fort Worth, Lexington, and Cross Plains, Tex., and Kansas City, Mo., to Camp Pike and Carbell Spur, Ark., and from Camp Pike and Carbell Spur to St. Louis and Kansas City, Mo., National Stock Yards, Ill., and Oklahoma City, Okla., found not unreasonable or unduly prejudicial. Complaint dismissed.

A. D. Beals and H. M. Gregory for complainants.

Henry G. Herbel and James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

By complaint seasonably filed Guy W. Caron and Arthur W. Campbell, copartners doing business as Caron & Campbell, attack the rates on hogs, in carloads, from Fort Worth, Lexington, and Cross Plains, Tex., and Kansas City, Mo., to Camp Pike and Carbell Spur, Ark., and from Camp Pike and Carbell Spur to St. Louis and Kansas City, Mo., National Stock Yards, Ill., and Oklahoma City, Okla., as unreasonable and unduly prejudicial. We are asked to prescribe reasonable rates for the future and to award reparation on various shipments made between March 16 and December 28, 1918.

At the hearing the allegations of undue prejudice were abandoned and complainants asked that rates not in excess of those applicable to and from Dalhoff, Ark., be established between Kansas City on the one hand and Camp Pike and Carbell Spur on the other; that the scale of distance rates hereinafter mentioned be prescribed from the Texas points to Camp Pike and Carbell Spur and from the latter to Oklahoma City; and that rates based on this scale be established from Camp Pike and Carbell Spur to St. Louis and National Stock Yards. Upon the basis sought the rates to Camp Pike and Carbell

Spur would be the same as now apply to Dalhoff, and the rates from these points to St. Louis and National Stock Yards would closely approximate the present rates to those destinations from Argenta, Ark. As the rates to National Stock Yards hereinafter referred to are the same as the rates to St. Louis, a reference to the latter will be understood to include the former. Rates will be stated in cents per 100 pounds.

Camp Pike is the terminus of a branch of the Missouri Pacific Railroad, 4.04 miles north of Military Junction, Dalhoff, Ark., at which point the branch connects with the Little Rock-Fort Smith division of that defendant's line. Dalhoff is about 2 miles north of Argenta or North Little Rock, Ark. The branch line was constructed during the summer of 1917. Complainants, who are engaged in feeding and fattening hogs, contracted with the government for the removal of garbage from Camp Pike and constructed feeding pens near that point. Their stock hogs are shipped principally from Texas, and, after fattening, are generally shipped to St. Louis. For some time after commencing operations complainants handled their shipments from a spur extending from the Camp Pike branch just south of the cantonment. Carbell Spur, 2.75 miles north of Dalhoff, directly intermediate between Dalhoff and Camp Pike, was established later.

The rate between Camp Pike and Dalhoff is and since July 5, 1917, has been 5 cents, though the charge authorized by the tariff appears generally to approximate 7 cents, as the rate is subject to a minimum charge of \$12 per car and it is testified that hogs in single-deck cars seldom load in excess of 17,000 pounds, the carload minimum weight provided by the tariff. The rates legally applicable to the shipments on which reparation is asked were combination rates, constructed by adding to the Dalhoff-Camp Pike local rate the following rates to and from Dalhoff:

From—	To—	Miles.	Rates.	
			Prior to June 25, 1918.	Effective June 25, 1918.
			Cents.	Cents.
Fort Worth.....	Dalhoff.....	394	43	50
Lexington.....	do.....	491	51	58
Cross Plains.....	do.....	537	47	54
Dalhoff.....	St. Louis.....	346	31.5	38.5

The shipments moved over the defendant carriers' lines and the legally applicable rates appear to have been generally assessed, though some shipments were undercharged and others were overcharged. The charges should be adjusted to the basis of the applicable rates.

The interstate rate between Carbell Spur and Dalhoff is 3 cents, and the present rates from Camp Pike and Carbell Spur to St. Louis are constructed by adding the present Dalhoff-St. Louis rate of 38.5 cents to the factors applicable up to Dalhoff. The present rates from Camp Pike and Carbell Spur to Kansas City are likewise constructed by adding to the respective factors applicable to Dalhoff the Dalhoff-Kansas City rate of 40 cents, which also applies in the reverse direction and is the same as the rate between Argenta and Kansas City, Dalhoff being intermediate to those points. However, as explained in the following paragraph, effective January 20, 1919, the joint distance scale of rates which complainants seek to have prescribed, was established from these Texas points to Camp Pike and Carbell Spur and from Camp Pike and Carbell Spur to Oklahoma City. Those rates, which are the present rates, and the distances between the respective points are:

From—	To—	Miles.	Present rates.
			<i>Cents.</i>
Fort Worth.....	Camp Pike.....	398.04	42.5
Lexington.....	.....do.....	495.04	45
Cross Plains.....	.....do.....	541.04	46
Fort Worth.....	Carbell Spur.....	396.75	42.5
Lexington.....	.....do.....	493.75	45
Cross Plains.....	.....do.....	539.75	45
Camp Pike.....	Oklahoma City.....	410.04	45
Carbell Spur.....	.....do.....	408.78	45

The tariff containing the distance rates provides that they will apply from points in Arkansas to points in Oklahoma, and from points in Texas to points in Arkansas, with certain exceptions which do not include Camp Pike and Carbell Spur. It also provides that distances to be used in computing rates will be found in distance tables referred to, but the distance table of the Missouri Pacific to which reference is made does not list Camp Pike and Carbell Spur. It appears that it was not the intention of the Missouri Pacific to extend the distance rates to these Arkansas points; that all interstate local rates on the Camp Pike branch have been published subject to the express provision that the rates apply in addition to the Dalhoff rates; and that, with the exception of the distance rates mentioned, interstate rates to and from points on this branch are and have been based on the Dalhoff combination. The tariff naming the joint distance rates is necessarily controlling as to the rates named therein, and its express provisions including these Arkansas points among those to and from which the distance rates apply are not invalidated by the failure to publish in the distance table referred to the distances between stations on the Camp Pike-Carbell Spur branch. This conclusion disposes of complainant's request for establishment of the

distance rates, so far as traffic from the three Texas points of origin to these Arkansas points, and from the latter to Oklahoma City, is concerned.

It is testified for complainants that when the Camp Pike branch was opened to traffic the Arkansas Railroad Commission authorized the use of the Dalhoff combination in making through intrastate rates to and from points served by it, but that "it developed that there was sufficient business to not only pay a reasonable return on the investment, but also pay for the original investment during the year," and such authority was later rescinded and the application of continuous mileage rates was then required.

The rates now applicable from Camp Pike and Carbell Spur to St. Louis are compared by complainants with rates maintained by the Missouri Pacific on live stock from other Arkansas points to that destination. The exhibited rates are on a relatively lower basis than rates from Camp Pike and Carbell Spur, but little evidence was offered as to the relative transportation conditions. Numerous rates are also cited in support of the contention upon which complainants particularly rely, namely, that it is unusual for the Missouri Pacific to add arbitraries over the junction-point rate for a distance of 5 or 10 miles, and that in many instances that carrier extends the junction-point rate to points on an entire branch and to points on connecting lines.

The defendants, on the other hand, as urgently insist that when competition has not compelled exceptions to the rule, and such competition they assert has not existed on the Camp Pike branch, it has been the policy of the Missouri Pacific for many years to charge an arbitrary over the junction-point rate in making rates to and from points not served by the main lines, and as illustrating this policy they direct attention to rates on numerous commodities to St. Louis, from 2 to 4 cents higher from Dalhoff than from Argenta.

The branch from Dalhoff to Camp Pike was constructed because of the exigencies of the war and solely for the purpose of transporting government troops, materials, and supplies. Defendants state that the elevation at the camp is greater than at any other point on the Missouri Pacific system and that the grade of the branch is in excess of the grade on any part of that carrier's main lines or other branches; that by reason of the grade and sharp curves this portion of the road required an expenditure of \$250,000 in construction and entails heavy expenses in operation, the average trainload being only nine cars; that there is substantially no business transacted on the branch except that of the government and of the complainants, and that the contract entered into between the latter and the Missouri Pacific respecting the spurs in question, by its express terms is to be

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automatically canceled on the abandonment of the camp; that while at times during the war this camp had a capacity of 60,000 men, the number now stationed there is not in excess of 6,000 and the abandonment of the camp would leave the investment valueless except for salvage. It is argued that we have often sanctioned a higher basis of rates on newly constructed roads than on those which are well established, and numerous cases are cited in support of the contention that because of the peculiar facts pertaining to the construction and operation of the Camp Pike branch it should not be considered as an ordinary road built for permanent use and commercial purposes, and that the rates to and from points served by it may not properly be measured by the standard of the main-line rates and are properly made on the combination basis. They also directed attention to rates applying to a number of army camps in the south and southwest, made by the addition of locals over the junction-point rates. Camp McArthur, Tex., Camp Shelby, Miss., and other cantonments were mentioned in this connection, but the transportation conditions affecting those rates are not disclosed. In *Camp Logan (Houston), Tex., Rates*, 49 I. C. C., 389, we disapproved proposed schedules of carriers which would have resulted in increases over the junction-point rates on traffic to Camp Logan, Tex.; and in *Camp Bowie, Tex., Rates*, 49 I. C. C., 528, a similar finding was made with respect to rates to Camp Bowie, Tex.; but the facts upon which those decisions were based differed materially from the facts in the present proceeding.

In a number of cases we have required the extension of the junction-point rates to points on branch and connecting lines, where it appeared that the carriers had adopted such practice with respect to other points similarly located and circumstanced. No similarity of transportation and operating conditions affecting the rates assailed and the various rates cited by complainants is here disclosed.

The record does not establish that the combination basis which has generally been employed in the construction of the rates, results or has resulted in excessive or unlawful rates. Complainants disclaim any attack upon either factor of the through rates.

Upon this record we find that the rates assailed were not and are not unreasonable or unduly prejudicial. An order will be entered dismissing the complaint.

No. 10667.

COHEN-SCHWARTZ RAIL & STEEL COMPANY

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY, DIRECTOR GENERAL, ET AL.

Submitted November 25, 1919. Decided May 3, 1920.

Rate charged on old rails in carloads from Lafayette, La., to East St. Louis and Madison, Ill., found to have been unreasonable. Reparation awarded.

Philip G. Safford for complainant.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner which, with such modifications as have appeared necessary from our examination of the record, has been followed in this report.

✓The complainant, a corporation dealing in old rails at St. Louis, Mo., by complaint seasonably filed alleges that the rate of 55 cents per 100 pounds collected on nine carloads of old rails shipped between August 3 and September 17, 1917, from Lafayette, La., to East St. Louis and Madison, Ill., was unreasonable. Reparation only is sought. Rates will be stated in cents per 100 pounds unless otherwise specified.

Lafayette is 167 miles west of New Orleans on the line of defendant Morgan's Louisiana & Texas Railroad & Steamship Company. The rails were purchased from this defendant, and moved over its line to New Orleans, and thence to destination over the Illinois Central Railroad, a total distance of 854 miles.

Complainant's witness testified that he considered the commodity shipped to be "scrap iron." Two of the shipments were designated in the waybills, copies of which are of record, as "No. 1 scrap steel rail," two as "No. 2 scrap rail," two as "No. 4 scrap steel rail," and three as "scrap steel rail." A copy of the sales order of the general purchasing agent of the initial line to its agent at Lafayette, introduced as an exhibit, shows a direction to arrange for delivery

to complainant of 350 long tons of "No. 1 scrap steel rail," and 80 tons of "No. 4 scrap steel rail." Complainant paid per long ton \$35.60 for the No. 1 rail and \$33.35 for the No. 4 rail, and sold at prices varying from \$35 to \$52 per long ton. One shipment was sold as "heavy melting steel"; another for "re-rolling"; another as "re-rollers"; yet another as "smelting steel." Complainant's witness testified that he had sold relaying rail during 1917 for \$70 and \$75 per ton, and that scrap iron was worth at the same time \$35 to \$40 per ton.

Charges were collected based on the class C rate of 55 cents applicable on scrap iron. The classification description of scrap iron did not cover rails of the character shipped by complainant, nor was any class or commodity rate applicable. It becomes necessary, therefore, to determine what would have been a reasonable charge for the service rendered. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

Among the commodity rates cited by complainant was a rate of 24 cents on scrap iron, including old rails under 20 feet in length, from Texas common points to St. Louis. On September 12, 1919, defendants established a rate on both new and old rails in carloads from Lafayette to East St. Louis and Madison of \$6.80 per long ton. This was substantially equivalent to a rate of 24 cents per 100 pounds prior to the increase of June 25, 1918, initiated by the Director General of Railroads.

We find that the rate charged was unreasonable to the extent that it exceeded 24 cents. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

No. 10761.

ATLAS LEATHER MANUFACTURING COMPANY ET AL.

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 6, 1920. Decided May 3, 1920.

Following *Atlas Leather Mfg. Co., v. P., C., C. & St. L. R. R. Co.*, 55 I. C. C., 394, carload rating on scrap leather of a declared or agreed value not exceeding 3.5 cents per pound found to be unreasonable. Reparation denied.

C. H. Rodehaner for complainants.

Parker McColleston for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainants are the Atlas Leather Manufacturing Company and the Herkimer Fibre Company, corporations engaged in the manufacture of leatherboard at Caseyville, Ill., and Herkimer, N. Y., respectively. By complaint filed July 9, 1919, they allege that the fifth-class rating, minimum 24,000 pounds, prescribed by the official classification and applied by the defendant carriers to the transportation of carload shipments of scrap leather, was and is unreasonable and unduly prejudicial. The establishment, in the official classification or exceptions thereto, of a sixth-class rating subject to a carload minimum of 30,000 pounds is asked. Reparation is sought by the Herkimer Fibre Company on various shipments.

The identical issue here presented was among those considered in *Atlas Leather Mfg. Co. v. P., C., C. & St. L. R. R. Co.*, 55 I. C. C., 394, in which one of the complainants herein was also a party. We found, among other things, that the official classification rating on scrap leather, in carloads, of a declared or agreed value not exceeding 3.5 cents per pound, was unreasonable to the extent that it exceeded sixth class, minimum 30,000 pounds, but denied reparation, saying:

These defendants have not until now been authorized to establish or maintain rates on these commodities dependent upon the declared value. There
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is now no way of showing whether if rates so dependent upon declared or agreed value had been in effect shipments of value exceeding 3.5 cents per 100 pounds would have been forwarded at the higher rates or at the lower rates with the shipper in the latter case assuming the risk from loss or damage in excess of the declared or agreed value. The new rating is coupled with a minimum weight higher than that used in connection with the rating condemned and therefore no definite or sound basis for an award of reparation is presented. *Arlington Heights Fruit Exchange v. S. P. Co.*, 39 I. C. C., 88.

In the present case, which was heard before our decision in the former case had been announced, it was stated that the purpose was to arrest the operation of the statute of limitations with respect to reparation claimed by the Herkimer Fibre Company. The New York, New Haven & Hartford Railroad Company, one of the defendants herein, was not made a party to the earlier proceedings, but the Director General of Railroads was named as a defendant in each proceeding.

Following the case cited we find that the rating on scrap leather, in carloads, in the official classification, when of a declared or agreed value not exceeding 3.5 cents per pound, is, and for the future will be, unreasonable, to the extent that it exceeds or may exceed sixth class, minimum 30,000 pounds. Reparation is denied.

An appropriate order will be entered.

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No. 10786.

UNITED VERDE EXTENSION MINING COMPANY
v.
DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted February 11, 1920. Decided May 3, 1920.

Charges legally applicable on two cars loaded with wrought steel pipe and other articles comprising parts of a circulating steam system found not to have been unreasonable. Reparation awarded on account of overcharges.

E. H. B. Avery for complainant.

E. W. Camp for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MCHORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

Complainant is a corporation engaged in mining and smelting copper ore at Jerome, Ariz. By complaint seasonably filed it alleges that unreasonable charges were collected by defendants on two cars loaded with "pipe-bends and fittings" shipped October 19, 1917, from Philadelphia, Pa., to Clarkdale, Ariz. Reparation, including alleged excess war taxes, is asked. Rates will be stated in amounts per 100 pounds.

The shipments, which comprised various parts of a circulating steam system, were loaded into two cars and moved under separate bills of lading, neither of which made reference to the other, over the Baltimore & Ohio, Chicago, Burlington & Quincy and Atchison, Topeka & Santa Fe railroads. The parts loaded in one of the cars consisted of 49,950 pounds of wrought steel pipe, 2,300 pounds of bolts, and 50 pounds of packing. Those in the other car consisted of 11,085 pounds of wrought steel pipe, 6,255 pounds of iron steam separators, 1,610 pounds of fittings, and 50 pounds of gauges. In addition to war taxes, transportation charges were collected in the sum of \$564.84 on the first car, based on actual weight and a carload commodity rate of \$1.08 applicable to pipe fittings and connections; and \$525 on the other car, based on a minimum carload weight 57 I. C. C.

of 30,000 pounds and a carload rate of \$1.75 applicable to mining machinery. Although the complainant alleges that the rates charged on the respective shipments were unreasonable, its sole claim, as developed at the hearing, is that the commodities loaded in the second car constituted a part lot of those loaded in the first car and that the charges thereon should be governed by the "follow-lot" rule of the applicable tariff. That rule reads in part:

Section 1. When carload freight * * * is received in excess of the quantity that can be loaded in or on one car, the following rules shall apply:

Section 2. The shipment must be made from one station * * *, by one shipper, in one day, on one shipping order or bill of lading, to one consignee and destination.

Section 3. Each car, except the car carrying the excess, must be loaded to visible or marked capacity, and each car so loaded charged at actual or authorized estimated weight, subject to established minimum carload weight but not less than 30,000 lbs., and at the carload rate applicable.

Section 4 (a). The excess over the quantity that can be loaded in or on one car shall be charged.

(b) If loaded in one closed car, at actual or authorized estimated weight, and at the carload rating applicable on the entire shipment.

(c) If loaded on one open car, at actual or authorized estimated weight, and at the carload rating applicable on the entire shipment—subject to a minimum charge of 5,000 lbs. at first class rate.

* * * * *

Section 6. The way-bill for each car whether for the excess or full load, must give reference to the way-bill for each other car used in the shipment.

It is testified for complainant that the first car was loaded to visible capacity, that the forwarding of the shipments under separate billing was due to oversight of the shipper, and that the rule was complied with in every other particular. Defendants concede that the second car was handled in the identical manner in which it would have been handled had the rule been fully complied with. Nevertheless, it is apparent that to grant the relief asked would be tantamount to the waiver of an essential requirement of the rule, as the shipper failed not only to comply with its literal requirements, but also failed to make cross reference to the separate shipments in the actual billing or to take any step which would indicate that all the commodities were offered as a single shipment.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff rules affords no basis for a finding that the rate legally applicable is unreasonable or otherwise unlawful or for authorizing a waiver of their observance. *Maloney Tank Mfg. Co. v. St. L. & S. F. R. R. Co.*, 42 I. C. C., 605; *Good-Hopkins Lumber Co. v. G. N. Ry. Co.*, 51 I. C. C., 99.

The charges applicable to the first car were \$553.11, based on the respective actual weights of the articles shipped and the following rates: \$1.01 on wrought steel pipe, \$2.03 on bolts, and \$3.84 on packing; and on the second car \$424.51, based on the following rates: \$2.23 on wrought steel pipe, iron steam separators, and fittings, and \$3.84 on gauges. The shipments were therefore overcharged \$112.22. The \$1.01 rate was a carload rate, while the other rates applicable were those provided for less-than-carload shipments.

We do not find that the charges legally applicable were unreasonable, but we do find that the charges collected were illegal to the extent that they exceeded \$977.62. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those legally applicable; and that it is entitled to reparation from the defendant carriers in the sum of \$112.22, with interest. We are without power to order refund of war taxes.

An appropriate order will be entered.

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No. 10795.

LESSER-GOLDMAN COTTON COMPANY

v.

LOUISIANA & NORTH WEST RAILROAD COMPANY AND
DIRECTOR GENERAL, AS AGENT

Submitted December 30, 1919. Decided May 3, 1920.

Shipments of cotton from Emerson, Ark., to Magnolia, Ark., there compressed, and reshipped to destinations in New Hampshire and Massachusetts, found to have been misrouted. Reparation awarded.

Edward Gottschalk for complainant.

H. G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

Complainant, a corporation engaged in buying and selling cotton at St. Louis, Mo., by its complaint filed July 22, 1919, as amended, alleges that, due to misrouting, unreasonable charges were collected on 815 bales of cotton shipped in December, 1917, and January, 1918, from Emerson, Ark., to Magnolia, Ark., there compressed, and subsequently reshipped to points in New Hampshire and Massachusetts. Reparation is sought. Rates will be stated in cents per 100 pounds.

The cotton moved from Emerson in various small lots over the Louisiana & North West Railroad, hereinafter referred to as defendant, a line not under federal control, to Magnolia where it was compressed. The legally applicable rate on the inbound shipments was 16.8 cents. Complainant's witness testified that it paid charges in the sum of \$714.41 based on a rate of 17 cents. The shipments therefore were overcharged. Complainant also paid the charges for compression direct to the compress company at Magnolia. Defendant's tariff contained a provision that when cotton was re-shipped from Magnolia by way of its line within 12 months from date of shipment into Magnolia, to destinations to which rates were published from Magnolia, on presentation of claim through agent at

concentration point supported by inbound freight bills and outbound bills of lading, the inbound freight charges on the number of bales reshipped, but not in excess of the number of bales shipped in, would be refunded to shipper. The application of this provision, however, was restricted to certain routings from Magnolia, one being delivery by defendant to the Vicksburg, Shreveport & Pacific Railway at Gibbsland, La. In December, 1917, and January, 1918, eight bills of lading covering this cotton were executed at Magnolia consigning five carloads to Suncook, N. H., and one carload each to Greenville, N. H.; Maple Grove, Mass.; and Lowell, Mass., routed by the shipper "V., S. & P. at Gibbsland, La." The bills of lading show complainant or its agent as shipper and all were signed by defendant's agent at Magnolia. Because of an embargo by this route the shipments were held for some time at Magnolia, except one, which moved in the latter part of December, 1917, the others not being forwarded until April and May, 1918. All moved over defendant's line to McNeil, Ark., and were there delivered to the St. Louis Southwestern Railway, hereinafter termed the Cotton Belt. There was no tariff provision for refund of the inbound freight charges on cotton when moving from Magnolia over this route, and complainant seeks reparation for the amount thereof due to alleged misrouting by defendant.

When the bills of lading were made complainant had at Magnolia 290 other bales of cotton on which bills of lading had not been executed. On February 7, 1918, complainant instructed defendant to forward by way of the Cotton Belt these 290 bales to various points in Maine and Massachusetts. Bills of lading covering this cotton were made in February, 1918, and it moved over the Cotton Belt as directed. Defendant claims to have inferred from the instructions given to forward the 290 bales over the Cotton Belt that complainant desired the 815 bales so forwarded, because all shippers having cotton at Magnolia, including complainant, knew the conditions with respect to embargoes and car shortage and had been urging the movement of cotton from Magnolia. Complainant admits that it authorized movement of the 290 bales over the Cotton Belt but insists that it never gave any instructions, either express or implied, to forward the 815 bales over the Cotton Belt and the evidence does not justify a finding to the contrary.

Rates of 78 and 81 cents, to which defendant and other carriers were parties, were published by the Cotton Belt and the Vicksburg, Shreveport & Pacific, respectively, from Magnolia to the several destinations, but the transit arrangement only applied in connection with the 81-cent rate.

The route of movement of the shipments beyond the rails of the Cotton Belt is not shown. It was stated, however, by both complainant and defendant that 78 cents was the rate legally applicable on the shipments and that if the shipments had moved by way of Gibbsland the rate would have been 81 cents. It seems that different rates were charged on the shipments, some apparently having been charged 78 cents, some 81 cents, and others 88 cents, the latter being the rate published by way of the Cotton Belt on cotton when compressed by the carrier. But, as above stated, the charges for compression at Magnolia had been paid by complainant. Invoices introduced in evidence by complainant show that in settlement for the cotton it allowed consignees freight charges from Magnolia at the rate of 81 cents.

We find that the shipments were misrouted by the Louisiana & North West Railroad; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the inbound charges paid, less 8 cents per 100 pounds, the amount by which the rate from Magnolia over the route designated by the shipper exceeded the rate via the route of movement; and that it is entitled to reparation, with interest, from the Louisiana & North West Railroad Company. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice. The overcharges on the outbound shipments should be promptly refunded to the party or parties entitled thereto. We are without power to order refund of war taxes.

No. 10800.¹

ST. BERNARD CYPRESS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEW ORLEANS,
TEXAS & MEXICO RAILWAY COMPANY, ET AL.

Submitted March 4, 1920. Decided May 3, 1920.

Rates on cypress lumber, in carloads, from New Orleans, La., to Violet, Phoenix, and Pointe-a-la-Hache, La., found unreasonable. Reparation awarded.

E. W. McKay for complainants.

R. H. Kelley for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainants, corporations engaged in the lumber business at New Orleans, La., seek reparation, alleging by complaints seasonably filed that the class rates charged on cypress lumber, in carloads, from New Orleans to Violet, Phoenix, and Pointe-a-la-Hache, La., were unreasonable to the extent that they exceeded commodity rates subsequently established. Rates will be stated in cents per 100 pounds.

The shipments moved during the period from August, 1918, to January, 1919, over the Louisiana Southern Railway. Charges were collected at the applicable class A rates of 11.5 cents to Violet, 11 miles; and 21.5 cents to Phoenix, 35 miles, and to Pointe-a-la-Hache, 45 miles. Prior to June 25, 1918, there were commodity rates on lumber of 3 cents to Violet and 5 cents to Phoenix and Point-a-la-Hache, published to expire by limitation June 30, 1918. On June 25, 1918, they were increased to 4 and 6.5 cents, respectively, under General Order No. 28 of the Director General of Railroads. Upon the expiration of these rates, on June 30, 1918, the class rates assailed became applicable. Defendants apparently concede that the application of the class rates to this traffic was unreasonable, and state that but for the extraordinary conditions existing at the time, affecting

¹ This report also embraces No. 10800 (Sub-No. 1), Same v. Same; and No. 10800 (Sub-No. 2) Louisiana Red Cypress Company v. Same.

the revision and publication of rates as a result of General Order No. 28, it is probable that commodity rates would have been provided. On February 6, 1919, the Director General established the following commodity distance scale:

Distance.	Rate.
	<i>Cents.</i>
10 miles and less.....	6
20 miles and over 10.....	7
30 miles and over 20.....	8
40 miles and over 30.....	9
50 miles and over 40.....	10

In *Ruddock Orleans Cypress Co. v. Director General*, 55 I. C. C., 236, we found the rate of 11.5 cents on cypress lumber from New Orleans to Violet unreasonable and awarded reparation to the basis of 7 cents, the rate subsequently established under the distance scale.

We find that the rates assailed to Violet, Phoenix, and Pointe-a-la-Hache were unreasonable to the extent that they exceeded 7 cents, 9 cents, and 10 cents, respectively; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should comply with rule V of the Rules of Practice. We are without power to order refund of war taxes.

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No. 10844.

TUFFLI BROTHERS PIG IRON & COKE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted February 9, 1920. Decided May 3, 1920.

Rate on pig iron in carloads from Birmingham, Ala., to McGill, Nev., found not to have been unreasonable or otherwise unlawful. Refund of overcharges directed and complaint dismissed.

J. Scheele for complainant.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MCHORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainant, a corporation engaged in buying and selling pig iron at St. Louis, Mo., by complaint seasonably filed, as amended, seeks reparation on two carloads of pig iron shipped August 21, 1916, from Birmingham, Ala., to St. Louis, and reconsigned to McGill, Nev., alleging that the combination of rates based on St. Louis, which was assessed upon the shipments was unreasonable, unjustly discriminatory, and unduly prejudicial, in violations of sections 1, 2, and 3 of the act to regulate commerce to the extent that it exceeded a joint through rate applicable via another route. Rates will be stated in amounts per long ton.

Complainant forwarded the shipments, aggregating 90 tons, from Birmingham consigned to itself at St. Louis via the defendant Louisville & Nashville Railroad, and when notice of shipment was received on August 24, 1916, issued a reconsignment order to that carrier at St. Louis directing that the cars be reshipped to the Nevada Consolidated Copper Company, McGill, Nev., via the Missouri Pacific, Denver & Rio Grande, and Western Pacific railroads. A new bill of lading was issued in accordance with these instructions and the cars moved as routed. Charges of \$783.20 were collected on each car. These were 20 cents in excess of the charges based

upon the legally applicable combination rate of \$17.40, made up of \$3.40 from Birmingham to St. Louis, \$10.08 from St. Louis to Shafter, Nev., and \$3.92 beyond. Refund of the apparent overcharge of 40 cents should be promptly made.

Complainant shows that at the time these shipments moved, the other carriers originating pig iron at Birmingham for shipment west, participated in a joint through rate via St. Louis, and other gateways of \$11.20 to Cobre, Nev., from which point to McGill the rate is the same as the rate from Shafter, namely, \$3.92, making a through rate of \$15.12 which would have been applied had the shipments originated at Birmingham on lines other than the Louisville & Nashville. Complainant contends that, since the other available lines published a lower rate, the rate charged is unreasonable. About three months after these shipments moved the Louisville & Nashville filed its concurrence in the tariff publishing the joint through rate to Cobre.

No proof was introduced in support of the allegations of unjust discrimination and undue prejudice. No rate comparisons or other evidence bearing upon the unreasonableness *per se* of the rate assailed was introduced by complainant. It relied solely on the fact that a lower rate was applicable via another route, which was subsequently established via the route of movement. We have repeatedly held that such facts standing alone are insufficient to establish the unreasonableness of rates attacked.

Defendant Louisville & Nashville urges that since the shipments were billed to St. Louis it could do nothing other than receive them for transportation to that point and apply its legally published rate, and that since that rate was established pursuant to our decision in *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 30 I. C. C., 597, it accorded with our judgment as a reasonable rate, represented a reduction from the former rate, and must be presumed to have been reasonable for the movement to St. Louis. This defendant states that it did not participate in the joint through rate to Cobre because it deemed that rate too low, but later, when it appeared that its nonparticipation therein not only affected its pig iron traffic but other traffic as well, it was forced to meet the competition and published its concurrence.

We do not find that the rate assailed was unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 10864.

GILL-ANDREWS LUMBER COMPANY

v.

DIRECTOR GENERAL, CHICAGO & NORTH WESTERN
RAILWAY COMPANY, ET AL.

Submitted February 26, 1920. Decided May 3, 1920.

Demurrage charges at Lansing, Mich., on a carload of lumber from Deerbrook, Wis., illegally assessed. Reparation awarded.

A. E. Solie for complainant.

W. K. Williams for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainant, a corporation engaged in the lumber business at Wausau, Wis., alleges by complaint filed September 2, 1919, that the demurrage charges collected by defendants on a carload of lumber shipped August 3, 1917, from Deerbrook, Wis., and diverted at Milwaukee, Wis., to Lansing, Mich., were unjust and unreasonable. The amount of the demurrage is not questioned, complainant's contention being that the detention was due to error on the part of the defendant carriers. Reparation in the sum of \$30 is asked.

Complainant had received an order from the Strable Lumber & Salt Company, of Saginaw, Mich., to ship a carload of lumber to that company at Lansing. On August 2, 1917, the lumber was billed from Deerbrook, in compliance with complainant's instructions, to "Gill-Andrews Lbr. Co., Milwaukee, Wis., G. T. at Mil. M. C. Del.," with the words "to be reconsigned to Lansing, Mich.," appearing in the body of the bill of lading under the caption, "Description of Articles." The shipment left Deerbrook on August 3, 1917, and on that day complainant mailed an invoice containing the car number to the Strable Lumber & Salt Company at Saginaw, and on August 4 mailed to the agent of the Grand Trunk Railway at Milwaukee an order to divert the car to the Strable Lumber & Salt

Company at Lansing. A copy of this order was introduced in evidence. Complainant's witness testified that the diversion order was mailed in an ordinary envelope bearing complainant's name and the usual return notice, although it formerly had been accustomed to send such orders by registered mail. The order was never received.

The car moved over the Chicago & North Western Railway to Milwaukee; Grand Trunk Western Railway, via ferry across Lake Michigan, to Owosso, Mich.; and Michigan Central to Lansing. The movement beyond Milwaukee was in accordance with instructions received by the Grand Trunk Western from the Chicago & North Western. The arrival notice was evidently forwarded to complainant at Lansing, where it has no office. Ten days after the car arrived the Strable Lumber & Salt Company, upon being informed by a customer to whom it had sold the lumber that the car was at Lansing consigned to complainant, paid demurrage charges in the sum of \$30 and unloaded the car. The Strable Lumber & Salt Company later deducted the amount of the demurrage charges from complainant's invoice.

Defendants contend that the bill of lading, construed as a whole, authorized delivery at Lansing; that the notation "M. C. Del." could not be observed at Milwaukee for the reason that the Michigan Central does not serve that point, but could be observed at Lansing; and that in the absence of further instructions from the shipper it was the right and the duty of the defendants to forward the car for Michigan Central delivery at Lansing.

Complainant contends that the notation in the bill of lading "to be reconsigned to Lansing, Mich.," may not properly be construed as reconsignment instructions, but merely as a notice to the carrier to hold the car at Milwaukee; that no consignee at Lansing was named in the bill of lading; and that under these circumstances it was the duty of the carriers to hold the car at Milwaukee and await reconsignment instructions.

It is the duty of a carrier to issue a bill of lading free from ambiguity or uncertainty. This was not done. To regard Milwaukee as the ultimate destination is inconsistent with "M. C. Del.," and also inconsistent with the notation. To regard Lansing as the ultimate destination is difficult in view of the fact that no consignee at Lansing is named and the further fact that the Grand Trunk's tariff did not provide for holding at Milwaukee. Complainant desired the shipment to go to the Strable Lumber & Salt Company at Lansing, but no evidence of that desire is to be found in the bill of lading, which names the complainant as consignee at Milwaukee.

We find that the Chicago & North Western Railway was at fault in accepting and moving the shipment in question under the instruc-

tions contained in the bill of lading, and that the demurrage charges in issue were assessed as a result of detention due to its error.

The demurrage rules of the Michigan Central, in effect during the period of detention, provided, in part, that—

no demurrage charges shall be collected under these rules for detention of cars through causes named below. Demurrage charges assessed or collected under such conditions shall be promptly cancelled or refunded by the carrier.

* * * * *

(E) Railroad errors which prevented proper tender or delivery.

Under these rules, no demurrage accrued on these shipments, and therefore the demurrage charges collected were illegally assessed. *Middle West Coal Co. v. C. & O. Ry. Co.*, 41 I. C. C., 723; *Schuh-Mason Lumber Co. v. M. & O. R. R. Co.*, 46 I. C. C., 365. We further find that complainant paid and bore these demurrage charges; that it has been damaged in the amount thereof; and that it is entitled to reparation from the Michigan Central Railroad Company in the sum of \$30, with interest.

An appropriate order will be entered.

57 I. C. C.

No. 10922.

CAROLINA PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL. CENTRAL OF GEORGIA RAILWAY
COMPANY, ET AL.

Submitted February 20, 1920. Decided May 3, 1920.

Carload of yellow-pine lumber from Slaughters, Ala., to Cairo, Ill., reconsigned to Cincinnati, Ohio, found to have been misrouted. Reparation awarded.

A. J. Ribe for complainant.

Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner and here followed by us.

Complainant is a corporation dealing in building material, with general offices at Charleston, S. C. By complaint seasonably filed it alleges that, due to misrouting, unreasonable and illegal charges were collected by defendants on a carload of yellow-pine lumber shipped August 13, 1917, from Slaughters, Ala., to Cairo, Ill., and reconsigned to Cincinnati, Ohio. Reparation is asked. Rates will be stated in cents per 100 pounds.

The shipment, weighing 69,600 pounds, was originally consigned to complainant at Cairo and moved to that point on August 13, 1917, from Slaughters by way of the Central of Georgia and Illinois Central railroads. On September 5, 1917, after the shipment arrived at Cairo, complainant by letter directed the Illinois Central to reconsign the car to Cincinnati, but specified no routing. The shipment moved from Cairo over the Illinois Central to Indianapolis, Ind., and thence to Cincinnati by way of the Cleveland, Cincinnati, Chicago & St. Louis Railway. Upon its arrival at Cincinnati the consignee ordered the car placed for unloading at St. Bernard, Ohio, a point within the Cincinnati switching limits and taking Cincinnati rates. Charges of \$206.02, excluding demurrage charges accruing at Cairo and not in issue, were collected at a rate of 29.6 cents. The rate legally applicable was 31.6 cents, made up of 20 cents to Cairo and 11.6 cents beyond. The shipment was therefore undercharged \$13.92.

When the shipment moved a tariff to which the Central of Georgia, the Illinois Central, and the Baltimore & Ohio Southwestern railroads, among others, were parties, published a joint rate of 20 cents on yellow-pine lumber, in carloads, from Slaughters to Cincinnati. That rate was not restricted in its application to any particular route or routes. The tariff provided that shipments taking the rates named therein would be subject to the reconsigning charges and privileges authorized by the tariffs of the individual carriers parties thereto. The tariff of the Illinois Central in effect when the shipment moved authorized reconsignment to destinations beyond the reconsigning points, at the through rates and without additional charge, of carload freight originating on or beyond its lines, upon condition that requests to change destination were received in writing, accompanied by the original bills of lading, in time for cars to move over routes via which through rates were in force; and, in instances where the change in destination necessitated a back haul, reconsignment was permitted at the sum of the local rates to and from the reconsigning point.

Complainant contends that as the routing between Slaughters and Cincinnati was not restricted in the tariff naming the joint rate of 20 cents, that rate was applicable over the Central of Georgia to Birmingham, the Illinois Central through Cairo to Odin, Ill., and the Baltimore & Ohio Southwestern to Cincinnati; and that the distance over that route to Cincinnati, 828 miles, is not unreasonable as compared with distances of 768 and 792 miles, respectively, over the Illinois Central's natural route through Fulton, Ky., to Louisville, Ky., and the Louisville & Nashville or Baltimore & Ohio Southwestern to Cincinnati. It rests its claim for reparation upon the alleged misrouting resulting from the failure of the Illinois Central, in the absence of routing instructions, to forward the car from Cairo to Cincinnati over one of the routes via which it contends that the joint rate, which was lower than the combination rate applied for the movement through Indianapolis, was applicable.

Defendants, on the other hand, contend that the joint rate should be protected only on shipments moving over natural routes; that the natural route of the Illinois Central on traffic from Slaughters to Cincinnati is by way of Fulton, the junction point of its Louisville and Cairo lines, located 44 miles southeast of Cairo; that in order to obtain the benefit of the joint rate complainant should have requested reconsignment before the shipment passed Fulton; and that complainant's claim that the joint rate should have been protected via the more circuitous route through Cairo is founded upon an interpretation of the tariff which is wholly unreasonable.

In *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.*, 47 I. C. C., 59, we found that if it was defendants' purpose to restrict the application of a joint rate to any particular route, and the reconsigning privilege authorized in connection therewith to any particular point, it should have been done by clear and unequivocal language.

The lumber constituting the shipment was sold by complainant for account of the original consignor, the agreement between them providing that complainant should bear any freight overcharges and assume the burden of recovering back any such overcharges from the carriers. On the assumption that the joint rate of 20 cents was lawfully applicable on the through movement, complainant remitted to the original consignor an amount equal to the difference between the invoice price of the lumber and the charges which would have accrued at that rate. It is therefore entitled to any reparation which may be found due on this shipment.

We find that if the shipment had been forwarded from Cairo to Cincinnati by way of Odin and the Baltimore & Ohio Southwestern Railroad the rate legally applicable from Slaughters to Cincinnati would have been 20 cents per 100 pounds. We further find that the Illinois Central Railroad misrouted the shipment; that the shipment was made as described; and that the complainant paid and bore the charges thereon and was damaged by such misrouting to the extent of the difference between the charges paid and those which would have accrued had the shipment been forwarded by way of the route through Odin over which the 20-cent rate applied; and that it is entitled to reparation from the Illinois Central Railroad Company in the sum of \$66.82, with interest. That carrier should make settlement with its connections on basis of the applicable rate.

An appropriate order will be entered.

No. 10868.

GRIESS-PFLEGER TANNING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted March 25, 1920. Decided May 3, 1920.

Charges collected on a less-than-carload shipment consisting of a press bed of an embossing machine from Waukegan, Ill., to Champlain, N. Y., found not to have been illegal or otherwise in violation of the act. Complaint dismissed.

John P. Powers for complainant.*Robert H. Widdicombe* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

Complainant, a corporation engaged in tanning hides at Waukegan, Ill., by complaint seasonably filed alleges that the less-than-carload charges collected by defendants for the transportation of a damaged portion of an embossing machine, known as a Sheridan press rising bed, weighing 2,750 pounds, from Waukegan to Champlain, N. Y., in August, 1918, were illegal, unjust, and unreasonable to the extent that they exceeded charges which would have accrued if the rate contemporaneously applicable on scrap iron had been applied. Reparation is asked.

The shipment was billed by complainant as "1 Sheridan Press." Charges were collected at the first-class rate of \$1.215 per 100 pounds applicable on machinery. The sole contention of complainant is that the shipment was scrap iron and that the charges accordingly should have been based on the fourth-class rate of 57.5 cents per 100 pounds.

Complainant's witness testified that the press bed was in one piece but that it was cracked; that a representative of the manufacturers after an inspection had advised complainant that it could not be repaired, that it was scrap iron and that to determine the cause of

the crack it would be necessary to return the bed to the factory at Champlain for examination; that in shipping it to Champlain it was erroneously billed as a press instead of scrap iron; and that upon receipt of the shipment the manufacturers issued a credit memorandum to complainant for \$12.09, representing the difference between the value of the press bed as scrap iron and the freight charges on the shipment. The witness had no personal knowledge of the shipment, his testimony being entirely hearsay.

Defendants' tariff provides that the rate on scrap iron applies only on "scraps or pieces of iron or steel of value for remelting purposes only." It is not shown that the press bed had reached the stage of being the "scraps or pieces of iron or steel" contemplated by the tariff description of scrap iron.

We find that the charges collected were not illegal or otherwise in violation of the act. An order dismissing the complaint will be entered.

57 I. C. C.

No. 10889.

PINE PLUME LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

Submitted February 11, 1920. Decided May 3, 1920.

Rate charged on five carloads of cypress lumber from Gable, S. C., to East Norwood, Ohio, found to have been unreasonable. Reparation awarded.

E. W. McKay for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions were filed by the parties.

Complainant is a corporation engaged in the purchase and sale of lumber at Savannah, Ga. By complaint filed August 23, 1919, it alleges that the rate charged by defendants for the transportation of five carloads of cypress lumber from Gable, S. C., to East Norwood, Ohio, in May and June, 1919, was unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. Reparation is asked. Rates will be stated in cents per 100 pounds.

Gable is a point on the Alcolu Railroad, a line not under federal control. East Norwood is within the switching limits of Cincinnati, Ohio, and Cincinnati rates are applicable thereto on lumber from southern points, including Gable.

Between May 23 and June 17, 1919, both inclusive, complainant shipped five carloads of cypress lumber, weighing 214,900 pounds, from Gable consigned to the Boss Washing Machine Company at East Norwood. The shipments moved over the Alcolu Railroad and Atlantic Coast Line to Augusta, Ga., Georgia Railroad to Atlanta, Ga., thence Louisville & Nashville Railroad to Cincinnati. Delivery was made by the Cincinnati, Lebanon & Northern Railroad. Charges aggregating \$666.19 were collected at destination at the applicable joint rate of 31 cents. These charges were paid by the consignee and

deducted from the invoice price of the lumber. Complainant contends that the rate charged was unreasonable to the extent that it exceeded 30 cents.

From May 15, 1916, to June 1, 1918, the rate on lumber from Gable to Cincinnati, applicable over the route of movement, was 25 cents. On the latter date this rate was increased 1 cent, presumably under permission granted in our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. That order, however, did not authorize any increase in the lumber rates from South Carolina or other southern States to Ohio River points. Effective June 25, 1918, the 26-cent rate was increased to 31 cents, under General Order No. 28 of the Director General of Railroads. Defendants admit that the 1-cent increase was made in error and express their willingness to pay the reparation asked. The joint rate was reduced to 30 cents, effective February 29, 1920.

We find that the rate assailed was unreasonable to the extent that it exceeded 30 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$21.49, with interest.

An appropriate order will be entered.

57 I. C. C.

No. 10899.
LOWRY LUMBER COMPANY
v.
DIRECTOR GENERAL, MICHIGAN CENTRAL RAILROAD
COMPANY, ET AL.

Submitted February 11, 1920. Decided May 3, 1920.

Allegation that charges collected on a carload of lumber from Texla, Tex., to Owosso, Mich., were unreasonable because computed on an excessive weight not sustained. Complaint dismissed.

G. H. Lowry for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

A proposed report was served upon the parties. No exceptions were filed.

By complaint seasonably filed complainant, a corporation, alleges that the charges collected by defendants for the transportation of a carload of lumber shipped August 10, 1916, from Texla, Tex., to Owosso, Mich., were unjust and unreasonable in that they were computed on the basis of an excessive weight. Reparation is asked.

The shipment consisted of 1 by 4 inch long-leaf yellow-pine lumber, dressed to $\frac{3}{4}$ inch in thickness. Charges were assessed on a weight of 40,400 pounds, obtained August 12, 1916, at De Quincey, La., the first weighing point en route, about 25 miles from Texla. The scale had been tested on January 12, 1916, and each of its four sections was found to be weighing heavy by amounts varying from 40 to 160 pounds. A slight adjustment was made and the scales then weighed correctly. The scale was next tested February 17, 1917, when each section was weighing perfectly. No repairs were made and none was necessary during the intervening period.

The shipment was transferred from the original car and re-weighed en route at Centralia, Ill., on August 24. This showed a weight of 38,700 pounds. The scale at Centralia was tested August 2 and September 23, and was found to be weighing correctly at each test.

At complainant's request it was again reweighed at destination, September 5, and a weight of 37,400 pounds was obtained. The scale at that point had been tested August 24, and the third and fourth sections were found to be weighing 40 pounds heavy. This was corrected, and a further test February 6, 1917, showed that it was weighing perfectly on all sections.

Complainant offered a sworn statement of the shipping clerk who loaded the shipment that all the lumber was kiln dried. Complainant alleges that the estimated weight of 15,330 feet of kiln-dried dressed pine, the amount of lumber contained in this shipment, based upon the tables of weights employed by lumber manufacturers, would be 37,400 pounds.

Defendants contend that the differences in weight obtained at the three weighings of the shipment were the result of shrinkage in the lumber, which they claim was partly green; and in support of this contention they showed that the purchaser of the shipment demanded an adjustment in the invoice price on 4,482 feet of the lumber on account of poor dressing which the purchaser, in a letter, introduced in evidence, stated was due to the fact that about half, more or less, of the lumber was green.

The evidence offered by complainant is not sufficient to establish inaccuracy in the track-scale weights. We find that the allegations of the complaint have not been sustained, and an order will be entered dismissing the complaint.

No. 10918.
THOMAS IRON COMPANY
v.
DIRECTOR GENERAL.

Submitted May 6, 1920. Decided May 11, 1920.

Rate on coke in carloads from Seaboard, N. J., to Hellertown, Pa., found to have been unreasonable. Reparation awarded.

George W. Aubrey for complainant.

A. B. Hayes for intervener.

John L. Seager for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by the complainant, and the parties have orally argued the case before us.

The complainant, a corporation engaged in manufacturing pig iron at Hellertown, Pa., by complaint filed September 23, 1919, alleges that the rate of \$1.65 per net ton charged on 113 carloads of coke shipped during the period between March 10 and May 16, 1918, both inclusive, from Seaboard, N. J., to Hellertown was unreasonable to the extent that it exceeded a rate of \$1.40. Reparation only is sought. The Seaboard By-Product Coke Company, which operates a by-product coke plant at Seaboard, intervened on behalf of the complainant. Rates will be stated in amounts per net ton.

Seaboard is on the Delaware, Lackawanna & Western and the Erie railroads, a short distance west of Hoboken, N. J. Hellertown is on the North Penn branch of the Philadelphia & Reading Railway about 4 miles south of Bethlehem, Pa. The shipments moved over the lines of the Delaware, Lackawanna & Western to Phillipsburg, N. J., Central Railroad of New Jersey to Bethlehem Junction, Pa., and the Philadelphia & Reading beyond, a distance of about 93 miles. Charges were collected at the applicable rate of \$1.65, made up of a rate of \$1.15 from Seaboard to Bethlehem and a rate of 50 cents beyond. Subsequent to the movements, June 10, 1918, a

joint rate of \$1.40 was established from Seaboard to Hellertown over the route the shipments moved. On June 25, 1918, following General Order No. 28 of the Director General of Railroads, this rate was increased to \$1.80 and the rate of \$1.15 from Seaboard to Bethlehem was increased to \$1.60. These rates are still in effect.

Hellertown is in the territory which may be described as extending southwesterly from Easton, Pa., to Corning, Pa., and northwesterly from Easton to Parryville, Pa. The distance from Easton to Corning and Parryville is about 25 miles. Within this territory, in addition to complainant's furnace at Hellertown, there are furnaces at Bethlehem, Catasauqua, and Macungie, which produce pig iron and which employ iron ore, coke, limestone, and mill cinder or roll scale in the manufacture of their product. Complainant observes that the rates on iron ore from Buffalo; coke from Connellsville, Pa., and points in West Virginia; and roll scale from New England points have been uniform to all of the furnaces in this territory; also that the outbound rates on pig iron to points in New England have been uniform.

The uniformity referred to does not apply to certain short-haul traffic, including coke, and complainant is not seeking reparation on basis of the rate contemporaneously applicable from Seaboard to Bethlehem, which was the rate also applicable from Seaboard to other points in the territory described, but upon basis of a rate 25 cents greater than that contemporaneously applicable to these points. In support of its contention complainant points out that a spread of 25 cents between the rates to Hellertown and Bethlehem was established at the time the joint rate of \$1.40 was made effective and that the present spread between the rates to these points is 20 cents.

For the defendant it is admitted that the rate from Seaboard to Hellertown should not have exceeded the contemporaneous rate to Bethlehem by more than 25 cents, but it is insisted that the rate of \$1.15 to Bethlehem when complainant's shipments moved was subnormal. In support of this it is urged that transportation from Seaboard to Hellertown involves complicated switching movements near Seaboard and other switching. The rate of \$1.15 from Seaboard to Bethlehem did not compare unfavorably with the rates contemporaneously applicable from Seaboard and other coke-producing points for similar and greater distances to other points in Pennsylvania in the vicinity of Hellertown, and the switching operations referred to do not differ from those necessary in connection with movements from Seaboard to various other points in the vicinity of Hellertown to which lower rates applied.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.40 per net ton; that complainant made the shipments

as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record and complainant should file a statement in accordance with rule V of the Rules of Practice.

No. 10562.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, HOUSTON & BRAZOS VALLEY
RAILWAY COMPANY, ET AL.

Submitted August 27, 1919. Decided May 3, 1920.

Rates on crude sulphur, in carloads, from Bryanmound, Tex., to Thompson's Point, N. J., found not unreasonable or unduly prejudicial. Refund of overcharges directed and complaint dismissed.

Harvey S. Farrow for complainant.

A. H. Elder, J. W. Terry, and R. V. Fletcher for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

Complainant, a corporation engaged in manufacturing commercial explosives at Thompson's Point, N. J., alleges by complaint seasonably filed that the charges collected on numerous carloads of crude sulphur or brimstone, hereinafter referred to as sulphur, forwarded from Bryanmound, Tex., to Thompson's Point, were illegal, unreasonable, and unduly prejudicial. Reparation and the establishment of a reasonable rate for the future are asked. Rates will be stated in cents per 100 pounds.

Thompson's Point is about 17 miles from Wilmington, Del., by way of the Delaware River. Bryanmound is 70.5 miles south of Houston, Tex. The shipments moved during August, September, and October, 1917, as routed by the consignor: Houston & Brazos

Valley, St. Louis, Brownsville & Mexico, and Missouri, Kansas & Texas lines, St. Louis, Mo.; thence to Wilmington via either (1) Baltimore & Ohio, Cumberland Valley, and Philadelphia & Reading; or (2) Pennsylvania lines, Philadelphia & Reading; and beyond Wilmington via the Philadelphia & Reading car float; total distances of 2,233 and 2,175 miles, respectively. A rate of 48.5 cents was applicable, but it is admitted that charges in excess of those based on that rate were collected. The overcharges should promptly be refunded.

The evidence introduced by complainant is substantially similar to that submitted in *Du Pont de Nemours & Co. v. H. & B. V. Ry. Co.*, 56 I. C. C., 334. In that case we found, among other things, that a rate of 48.5 cents on this traffic from Bryanmound to Carney's Point, N. J., on the West Jersey & Seashore Railroad, about 3 miles north of Thompson's Point, was not unreasonable or unduly prejudicial. On long-haul traffic the rate to Thompson's Point and Carney's Point is generally the same.

Upon the record, and following our conclusion reached in the case cited, we find that the rate legally applicable to complainant's shipments was not unreasonable or unduly prejudicial.

An order will be entered dismissing the complaint.

No. 10919,
W. P. BROWN & SONS LUMBER COMPANY
v.
DIRECTOR GENERAL, ST. LOUIS & SAN FRANCISCO
RAILROAD COMPANY, ET AL.

Submitted February 20, 1920. Decided May 3, 1920.

Carload shipments of lumber from Sulligent, Ala., to Marion, Drexel, Morganton, Hickory, and Statesville, N. C., found to have been misrouted. Reparation awarded.

J. S. Thompson and P. P. Joyes for complainant.

D. Lynch Younger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainants are J. G. Brown and T. M. Brown, copartners engaged in the lumber business at Louisville, Ky., under the firm name of W. P. Brown & Sons Lumber Company. By complaint filed September 26, 1919, they allege that the rates charged by defendants on 14 carloads of lumber shipped between September 28, 1915, and September 8, 1916, both inclusive, from Sulligent, Ala., to Marion, Drexel, Morganton, Hickory, and Statesville, N. C., were illegal, unreasonable, and in violation of the fourth section of the act to regulate commerce. Reparation only is asked. The claim was presented to us informally within the statutory period. Rates will be stated in cents per 100 pounds.

The points of destination are on the Asheville division of the Southern Railway between Asheville and Salisbury, N. C. The shipments moved over the St. Louis & San Francisco Railroad to Birmingham, Ala., and the Southern beyond through Atlanta, Ga. Beyond Birmingham, in addition to the route of movement, the Southern has a route through Chattanooga and Knoxville, Tenn., and Asheville, N. C. Some of the shipments were tendered for transportation unrouted, and the others were routed either "Southern Railway" or "Southern Railway delivery."

The shipments aggregated 677,400 pounds and charges were collected in the sum of \$1,874.83, at rates ranging from 27 cents to 28.5 cents, the exact basis for which does not appear. The rates legally applicable were 28 cents to Marion, Drexel, Morganton, and Hickory, and 28.5 cents to Statesville, composed of 10 cents to Birmingham and 18 cents, or 18.5 cents, respectively, beyond. Some of the shipments were apparently undercharged and some overcharged.

When the shipments moved defendant carriers maintained a joint tariff which provided on lumber, from Sulligent in carloads, rates of 14 cents to Chattanooga, and 26.5 cents to Lexington. This tariff contained the following intermediate application rule:

To any point of destination not named in this tariff, but between any two points of destination named, the rate will be the same as to the next distant point that is named.

The destinations under consideration were not named in the tariff.

For defendants it is observed that while these destinations are directly intermediate to Lexington by way of the route through Birmingham and Chattanooga they are not directly intermediate to Lexington by the route of movement, and that the latter is also the one over which traffic from Sulligent to Lexington is routed.

The rate applicable to Lexington was not restricted to any particular route of the Southern, and had the shipments moved by way of Chattanooga, the 26.5-cent rate would have applied.

We find that the Southern Railway Company misrouted the shipments; that complainants made the shipments as described and paid and bore the charges thereon and were damaged by the misrouting to the extent of the difference between the charges applicable over the route of movement and those which would have accrued had the shipments been forwarded by the route over which the 26.5-cent rate applied; and that complainants are entitled to reparation, with interest, from the Southern Railway Company. The exact amount of reparation due can not be determined on this record. Complainants should comply with rule V of the Rules of Practice, including in the adjustment the outstanding undercharges and overcharges.

No. 10532.¹

WHITE BROTHERS & CRUM COMPANY

v.

DIRECTOR GENERAL, AMERICAN RAILWAY EXPRESS
COMPANY, ET AL.

Submitted August 19, 1919. Decided May 3, 1920.

Express rates on cherries, in carloads, from Lewiston, Idaho, and from Union, Oreg., to Regina, Saskatchewan, Canada, found to have been unreasonable. Reparation awarded.

H. W. Bishop for complainants.

A. H. Lossow for Dominion Express Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

By DIVISION 3:

Complainants in these cases are corporations engaged in the fruit business at Lewiston, Idaho, and Regina, Saskatchewan, Canada, respectively. By complaints seasonably filed they allege that the express rates charged by defendants on two carloads of cherries shipped, one from Lewiston, and one from Union, Oreg., originating at Cove, Oreg., to Regina in July and August, 1917, respectively, were unreasonable and in violation of the fourth section in that they exceeded the aggregates of intermediate rates contemporaneously in effect. They pray for reparation. Rates hereinafter referred to are express rates and are stated in amounts per 100 pounds.

The shipments weighed 17,360 and 18,750 pounds and moved from Lewiston and Union, respectively, to Regina by the American Express to Spokane, Wash., Western Express to Kingsgate, British Columbia, and Dominion Express beyond. Express charges of \$729.12 were collected on the shipment from Lewiston based on actual weight at the applicable through second-class (scale N) rate of \$4.20, and in the sum of \$841 on the shipment from Union. The charges legally applicable on the latter were \$843.75, based on the actual weight at the through second-class (scale N) rate of \$4.50.

¹ This report also embraces No. 10532 (Sub-No. 1), *Mutual Brokers of Regina, Limited, v. Same.*

This shipment was undercharged \$2.65. Only the express rates are attacked, the refrigeration and other charges not being in issue.

The sums of the intermediate rates contemporaneously in effect on cherries, in carloads, over the routes of movement were: From Lewiston to Regina, \$2.65—65 cents to Spokane and \$2 beyond; and from Union to Regina, \$3—\$1 to Spokane and \$2 beyond. The rates to Spokane were subsequently increased to 71 cents and \$1.20, respectively, and the rate beyond Spokane was increased to \$2.30. These rates are still in effect. On January 1, 1919, defendants established a joint rate of \$3.01 from Lewiston to Regina, and on July 1, 1919, a joint rate of \$3.50 from Union to Regina. These rates equal the sums of the intermediates and are still in effect.

Defendant express companies admit that the charges collected were unreasonable to the extent that they exceeded those which would have accrued based on the aggregates of the intermediate rates contemporaneously in effect and indicate willingness to make reparation accordingly. The Dominion Express, which moved the shipments from Kingsgate to destination, operates wholly within Canada, and is, therefore, without our jurisdiction. If the defendants, however, constituting a through route for traffic from a point in the United States to a point in Canada, concur in a joint rate which is unreasonably high they are jointly and severally responsible for the damage which results to any shipper on account of such unlawful rate. *Larrowe Milling Co. v. C., W. & L. E. R. R.*, 52 I. C. C., 145.

We find that the rates charged were unreasonable to the extent that they exceeded \$2.65 per 100 pounds from Lewiston and \$3 from Union to Regina; that the shipments were made as described and that the complainants paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those which would have accrued upon the basis herein found reasonable; that complainant White Brothers & Crum Company is entitled to reparation in the sum of \$216.28, with interest; and that the Mutual Brokers of Regina, Limited, is entitled to reparation in the sum of \$253.60, with interest.

An order awarding reparation will be entered against the American Express Company and Western Express Company.

No. 11214.

APPLICATION OF THE UNITED STATES STEEL PRODUCTS COMPANY ET AL., UNDER THE PROVISIONS OF SECTION 5 OF THE INTERSTATE COMMERCE ACT, IN CONNECTION WITH THE OWNERSHIP AND OPERATION OF STEAMER LINES THROUGH THE PANAMA CANAL.

Submitted April 3, 1920. Decided May 11, 1920.

1. The ownership by the United States Steel Corporation of the stock of both the United States Steel Products Company and the several applicant rail carriers held to constitute an interest within the meaning of section 5 of the interstate commerce act by said rail lines in water lines owned and operated by the United States Steel Products Company.
2. Under present conditions and conditions that seem probable in the near future whatever competition there may be between the applicant rail carriers and the steamer lines of the United States Steel Products Company, operating between ports on the eastern coast of the United States and ports on the western coasts of North and South America, through the Panama Canal, found unsubstantial and merely nominal.

Richard V. Lindabury, Charles MacVeagh, and Charles S. Belsterling for applicants.

Seth Mann for San Francisco Chamber of Commerce.

James C. Lincoln for Merchants' Association of New York.

Donald O. Moore for Chamber of Commerce of Pittsburgh.

Frank Lyon for Luckenbach Steamship Company.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*.

The United States Steel Corporation owns, directly or indirectly, the stock of the United States Steel Products Company and of the following railroads: Elgin, Joliet & Eastern Railway Company; Duluth, Missabe & Northern Railway Company; Duluth & Iron Range Railroad Company; Bessemer & Lake Erie Railroad Company; Union Railroad Company; Birmingham Southern Railroad Company; Pittsburgh & Ohio Valley Railway Company; Etna & Montrose Railroad Company; St. Clair Terminal Railroad Company; Donora Southern Railroad Company; McKeesport Connecting Railroad Company; Johnstown & Stony Creek Railroad Company; Benwood & Wheeling Connecting Railway Company; Mercer Valley

Railroad Company; Youngstown & Northern Railroad Company; Newburgh & South Shore Railway Company; Lake Terminal Railroad Company; Elwood, Anderson & Lapelle Railroad Company; and Pencoyd & Philadelphia Railroad Company. The United States Steel Corporation and the United States Steel Products Company will be referred to hereinafter as the steel corporation and the products company, respectively, and the names of the railroads will be abbreviated.

The principal business of the products company is the sale of products of other subsidiaries of the steel corporation in foreign and domestic markets, and among other things which its charter permits it to do is to own and operate steamers. In addition to irregular trans-Atlantic and trans-Pacific sailings, it operates two lines of steamers from New York, N. Y., to Brazil and Argentina, respectively, and two lines through the Panama Canal. One of the lines through the canal, registered under the trade name of the New York & South America Line, operates between New York and certain ports in Chile and Peru and other ports along the western coast of South America; the other, registered as the Isthmian Steamship Lines, was inaugurated February 6, 1920, and proposes to operate between New York and other eastern ports and ports on the western coast of this country and the port of Vancouver, British Columbia. The only sailing of the latter line prior to the hearing was on February 10, from New York to Vancouver.

On February 10, 1920, the steel corporation, the products company, and the railroad companies named filed a joint application asking a determination of the question whether the operation of the two lines through the Panama Canal is in contravention of section 5 of the interstate commerce act as amended by section 11 of the Panama Canal act. We have to determine, first, whether the railroads named "own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner)" in said boat lines, and, in the event of an affirmative conclusion, whether the railroads do or may compete for traffic with the boat lines.

The steel corporation is a holding company and owns either the capital stock of the products company and of the applicant railroads or the capital stock of the companies owning said stock. They are all clearly under one common control. There are no directors common to the products company and the applicant railroads, but the chairman of the board and two other directors of the board of the steel corporation are on the board of the products company and there are directors common to the steel corporation and certain of the

applicant railroad companies. There is one director, for instance, common to the steel corporation and the Elgin, Joliet & Eastern and the Duluth & Iron Range, and in some instances an officer or director of the steel corporation is an officer or director, or both, of one or more of the applicant railroads. The testimony of witnesses for the applicants is that the prime purpose of the steel corporation in owning railroads and steamer lines is to assist in manufacturing and selling, and in reducing the costs of manufacturing and selling, products of its subsidiaries. In view of all of these circumstances we deem it unquestionable that the railroad applicants have an interest in the Isthmian Steamship Lines and the New York & South America Line within the meaning of section 5 of the act.

In considering whether the railroads do or may compete with the Isthmian Steamship Lines, the roads of especial interest are the Elgin, Joliet & Eastern, the Bessemer & Lake Erie, and the Union Railroad. The Duluth & Iron Range and the Duluth, Missabe & Northern are not parties to transcontinental routes, except possibly in a technical way, and the only transcontinental traffic they handle is a small tonnage of lumber from the Pacific coast to points on their lines. Most of the other lines are industrial roads and need not be described. The Elgin, Joliet & Eastern, frequently referred to as the outer belt, operates a line around the city of Chicago, Ill.; its main line runs from Waukegan, Ill., to Porter, Ind., 129.95 miles, and it has branches running from Walker to South Wilmington, Ill., 32.74 miles, and from Griffith to Gary and Whiting, Ind., 16.08 miles; it operates under lease the line of the Chicago, Lake Shore & Eastern Railway, extending from Gary to South Chicago, Ill., 16.23 miles. This road is one of the heaviest originators of traffic in the country, a substantial part of which consists of steel products of subsidiaries of the steel corporation, and on through traffic it performs a so-called ferry service between the lines entering Chicago from various directions. On traffic originating at or destined to points on its lines it receives divisions of the joint rates, but for the ferry service it receives a per-car charge which does not vary with the commodity. The Bessemer & Lake Erie operates lines either owned by it or leased from the Pittsburgh, Bessemer & Lake Erie, from Conneaut, Ohio, and Erie, Pa., to North Bessemer, Pa.; its total mileage is 207.4 miles. The Union Railroad extends from a junction with the Bessemer & Lake Erie at North Bessemer to Mifflin Junction, Pa., 16 miles, and originates a large tonnage of steel products manufactured by subsidiaries of the steel corporation on which the Bessemer & Lake Erie receives a haul. Although the record is silent on that point, there would seem to be no tariff obstacles to both the Bessemer

& Lake Erie and the Elgin, Joliet & Eastern participating in traffic originating on the Union Railroad and destined to the Pacific coast. During the year prior to the hearing the Bessemer & Lake Erie handled 10,000 tons of such traffic.

There are now under construction for the products company 30 steamers of a tonnage of 9,680 tons each. As many of these will be placed in the service between the eastern and western coasts of North America as conditions from time to time may warrant. In the steamer which sailed from New York on February 10 last for Vancouver there were 3,000 tons of steel products for the products company, and 5,300 tons of miscellaneous freight for other shippers, and the estimates of the applicants, based upon experience, is that about one-third of the westbound tonnage of the Isthmian Steamship Lines will be steel products shipped by the products company.

The inauguration by one of the largest tonnage-producing industries in this country of a line of steamers in the coast-to-coast trade may, as contended by counsel for the Luckenbach Steamship Company, clear the water of the few independent lines now in existence and effectively discourage the establishment of any lines not similarly fostered. The intention of creating a monopoly, needless to say, is denied.

But we have not before us for determination any general question of public policy, for that is a matter for the Congress. Section 5 of the interstate commerce act charges us only with the duty, in a case of this kind, of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this we have to give due weight to the actual conditions at the present time. The railroads of the country are, and probably for some time will be, faced with an acute condition of car shortage, and they are, and undoubtedly will be, taxed to their utmost capacity to render in a reasonably satisfactory way the service demanded of them; and it may be seriously questioned that even the selfish interests, either of the railroads serving the steel manufacturing sections of the east and middle west or of the transcontinental carriers, would lead them to offer competition or take steps to discourage the forwarding via rail-and-ocean routes, through the eastern ports, of steel products hitherto moving all rail to the Pacific coast.

While we bear in mind that there is a very substantial volume of traffic local to the lines of the applicant carriers, especially the Elgin, Joliet & Eastern and the Bessemer & Lake Erie or its connection, the Union Railroad, which those carriers or their owners can route all rail or rail and ocean, and that under normal conditions of transportation there would be a question possibly somewhat

difficult of determination as to the existence or possibility of competition within the meaning of section 5 of the act between said lines and a coast-to-coast boat line in which they have an interest, we must give due consideration to the actual condition of and demands upon our systems of transportation and the effect of such condition and demands upon competition between carriers by rail and by water for transcontinental traffic. As the products company has not heretofore operated boats between our eastern and western shores we have not the benefit of past experience to guide us. But it seems clear that under present conditions and conditions that seem probable in the near future, whatever competition there is or may be between the applicant rail carriers and the proposed steamer line is unsubstantial and merely nominal.

The testimony referred almost entirely to the Isthmian Steamship Lines, but there would seem to be no probability of competition between the applicant railroads and the New York & South America Line.

Upon consideration of the record we find that the applicant roads do not and may not compete with the Isthmian Steamship Lines and the New York & South America Line. This finding is based upon the present record, and the conditions therein disclosed. It does not and can not conclude any finding on this subject which may hereafter be required by the facts as they may then be disclosed to us upon some subsequent record, in the light of experience and further development.

HALL, *Commissioner*, concurring in part:

In their joint application filed February 10, 1920, the United States Steel Products Company, 19 railway or railroad companies, and United States Steel Corporation set out that the steel corporation holds and owns all the stock and bonds of the other applicants; that the products company operates a service of transporting freight by steamships through the Panama Canal under the registered trade name of Isthmian Steamship Lines, plying between New York and other Atlantic ports and certain ports along the western coast of the United States and British Columbia, and also between said ports and the Orient; that the products company also operates through the Panama Canal a line of steamships under the registered trade name of New York & South America Line, plying between New York and certain ports in Peru and Chile and other ports along the western coast of South America; that there is no connection between any of said railroads and the said water lines or either of them; that no one of the applicant railroads has a voice in or is a party to the rate-making power of the long-line railroads which carry transcontinental

traffic; and, after alleging other matters, pray for hearing and investigation under section 11 of the Panama Canal act—

to determine whether the service of transportation by the United States Steel Products Company, of said steam vessels and other vessels hereinbefore referred to, would be, from and after March 1, 1920, in violation of said section; and that an order may be made finding and adjudging that the operation of vessels through the Panama Canal by the United States Steel Products Company will not be within the prohibitions of said Act.

They also pray for such other and further relief as the Commission may deem appropriate.

The application is entitled:

Application for an order permitting the continuance of a service of transportation through the Panama Canal not in conflict with the provisions of the Panama Canal Act.

Paragraph (10) of section 5 of the interstate commerce act as amended by the transportation act, 1920, was originally enacted August 24, 1912, as part of section 11 of the Panama Canal act. The application before us is expressly brought under the latter section. Paragraph (10) reads as follows:

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

The Panama Canal act confers no other jurisdiction upon the Commission in respect of service by water through the Panama Canal. Paragraph (11) of section 5 has to do with service by water "other than through the Panama Canal."

Full hearing has been had on the application, thus made by railroad companies, among others, and the Commission in the majority report determines the questions of fact as to the competition or possibility of competition. The Commission reaches the conclusion that the competition, actual or potential, is unsubstantial and nominal, and finds that the applicant railroads do not and may not compete with the Isthmian Steamship Lines and the New York & South America Line, within the meaning of the statute. In this finding I concur. There is no persuasive evidence of that "striving for something which another is actively seeking and wishes to gain," as the Supreme Court defined competition in *United States v. Union Pacific R. R. Co.*, 226 U. S., 61, 87.

The fact of noncompetition thus determined, it becomes immaterial whether "any railroad company or other carrier subject to the act" does or does not "own, lease, operate, control, or have any interest whatsoever," directly or indirectly, in the water carrier or vessel. Two elements, taken together, constitute the unlawfulness under the Panama Canal amendment to section 5 of the interstate commerce act: One is the ownership or interest; the other is the competition. If either element is lacking the statute is not violated.

The jurisdiction conferred by the Panama Canal amendment upon the Commission is to determine questions of fact as to the element of competition, not to determine the other questions which enter into the element of ownership or interest, and which, as I conceive, are properly within the jurisdiction of the courts. The majority undertake to pass on these questions of title or interest. In my opinion this is beyond our province, and the discussion as well as the conclusions expressed are superfluous and unnecessary and should be omitted from the report, even if the conclusions were well founded in law, which I doubt.

The majority report concludes without directing the entry of an order. In my opinion the Commission should give effect to its finding upon the questions of fact as to competition by making the order to which the applicants are entitled under paragraph (10) quoted above. By that statute it is the order and not the finding that is final.

I am authorized by COMMISSIONER DANIELS to say that he concurs in the views here expressed.

57 I. C. C.

No. 10671.

TAYLOR & SMITH

v.

DIRECTOR GENERAL, SOUTHERN PACIFIC COMPANY
(ATLANTIC STEAMSHIP LINES), ET AL.

Submitted February 27, 1920. Decided May 3, 1920.

Rate of \$1.16 per 100 pounds charged on a carload of peanuts shipped from Suffolk, Va., to El Paso, Tex., found to have been unreasonable to the extent that it exceeded 85 cents. Reparation awarded.

S. H. Wilson for complainants.

Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report of the examiner was served upon the parties and exceptions thereto were filed by the defendants.

Complainants are H. W. Taylor and H. C. Smith, copartners engaged in the brokerage business at El Paso, Tex., under the firm name of Taylor & Smith. By complaint seasonably filed, as amended, they allege that the rate charged on a carload of peanuts shipped to them April 26, 1917, from Suffolk, Va., to El Paso was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect. Only reparation is asked. Rates will be stated in amounts per 100 pounds.

The shipment, which weighed 32,044 pounds, moved over the lines of the Norfolk & Western Railway and the Old Dominion Steamship Company from Suffolk to New York, N. Y., thence by way of the Morgan line of the Southern Pacific Company (Atlantic Steamship lines) to Galveston, Tex., thence over the International & Great Northern and the Texas & Pacific railways to El Paso. A joint rate of \$1.16 was in effect from Suffolk to El Paso over the route of movement under tariffs on file with us. There were contemporaneously in effect over that route rates of 22 cents Suffolk to New York, 25 cents New York to Galveston, and 32 cents Galveston to El Paso, aggregating 79 cents. The port-to-port factor of 25 cents from New York to Galveston was not on file with us. The shipment, while admittedly destined to El Paso, was billed to Galveston, consigned to complainants in care of a forwarding agent who rebilled it to El Paso for the

purpose of securing the benefit of the lower aggregate of rates. But the delivering carrier demanded and ultimately collected charges in the sum of \$371.71 at the legally applicable joint rate of \$1.16. Effective April 28, 1917, two days after the shipment was forwarded from Suffolk, the Morgan line established a rate of 27 cents from New York to Galveston, and the tariff naming that rate was duly filed with us. On June 1, 1917, the joint rate of \$1.16 was reduced to 81 cents, the aggregate of the intermediates. On July 1, 1917, the joint rate was increased to 84.5 cents and again on September 15, 1917, to 85 cents, the port-to-port rate from New York to Galveston having been increased to 31 cents on September 10, 1917.

When the shipments moved, complainants believed that the applicable rate was a combination of 81 cents, and contend that the rate charged was unreasonable to the extent that it exceeded that amount. In view of the fact that the subsequently established joint rate of 81 cents remained in effect only for a short time and was then increased to 85 cents, they ask reparation on the basis of 85 cents.

Defendants contend that as the contemporaneous New York-Galveston rate was not on file with us there was no violation of the fourth section prohibition against charging greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of the act; that the rate from Suffolk to New York was low, covering a water-and-rail movement; and that the rate from Galveston to El Paso was intrastate and unduly low.

Defendants' witness testified that the basis for all-rail rates from eastern seaboard territory to Texas is the lowest combination over the route of movement, and that from Virginia the lowest combination bases on New Orleans; that competition via Atlantic and Gulf ports has fixed a certain relationship between the all-rail and rail-and-water rates from eastern seaboard territory to Texas; that on commodities rated fourth class, the rating applicable on peanuts, in carloads, in official and western classifications, the rail-and-water rates are ordinarily 23 cents less than the all-rail rates; and that at the time this shipment moved the all-rail rate from Suffolk to El Paso was \$1.39.

Defendants state that in 1912 the railroad commission of Texas prescribed the application of the grain rates on Spanish peanuts in order to promote the manufacture of peanut oil; that the carriers protested this action on the ground, among others, that grain loads heavier than peanuts, but without avail; and that the 32-cent rate from Galveston to El Paso was established in 1916 following *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, which, they urge, primarily involved undue prejudice. They compare the rate charged with rates from Suffolk contemporaneously

in effect of \$1.15 all rail and \$1.05 rail and water to Texas common points; \$1.39 all rail to points on the Texas & Pacific Railway intermediate to El Paso, and with rates from St. Louis of 96 cents to Texas common points; 91 cents to Dallas and vicinity; and \$1.17 to El Paso.

Until shortly prior to the movement of this shipment it had been the carriers' general practice to apply to shipments, which were in fact through shipments from eastern seaboard territory to interior destinations in Texas, combination rates based on Galveston which were lower than the joint rates contemporaneously in effect for the through movement. This practice of reshipping at Galveston is discussed in *S. P. Co. Ownership of Atlantic Steamship Lines*, 43 I. C. C., 168. In that proceeding we said that this practice appeared to have been engaged in consciously by both carriers and shippers, and represented the rule rather than the exception. Petitioner there was given 60 days from the date of service of that report to readjust the practices in question so as to bring the service into conformity with the act to regulate commerce. Following that decision the Morgan line, as stated, filed its port-to-port rate with us. The carriers, by consciously participating in the practice of rebilling prior to that period and thereafter by the establishment of joint rates, made the combination of locals the measure of what they deemed appropriate rates on traffic from Atlantic seaboard territory to interior Texas points.

Defendants' exceptions to the proposed findings of the examiner that the rate complained of was unreasonable and that reparation should be awarded are based upon two principal grounds: (1) That there was no evidence showing the rate collected to have been inherently unreasonable, and (2) that their former practice of applying the Galveston combination of rates on shipments rebilled at that point for the purpose of defeating the joint rates was not pursued voluntarily but through fear of incurring a penalty provided by the law of the state of Texas. The first objection overlooks the prima facie unreasonableness of a through rate higher than a combination, and the second overlooks the fact that the joint rate subsequently established equaled the combination which included the intrastate rate as one of its factors.

We find that the rate assailed was unreasonable to the extent that it exceeded 85 cents per 100 pounds; that complainants made the shipment as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges collected exceeded those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$99.34 without interest, complainants having waived interest. An order awarding reparation will be entered.

No. 10500.¹

CORPORATION COMMISSION OF NORTH CAROLINA

v.

DIRECTOR GENERAL, ATLANTIC COAST LINE RAILROAD
COMPANY, ET AL.

Submitted December 3, 1919. Decided May 18, 1920.

Rate adjustments between points in zones 1, 2, 3, and 4 in North Carolina and Norfolk and Richmond, Va., on the one hand, and points in South Carolina and the south east, on the other, and between points in zones 1 and 2 in North Carolina and Norfolk and Richmond, on the one hand, and eastern ports and interior eastern points, on the other, found unduly prejudicial to the North Carolina points and unduly preferential of Norfolk and Richmond. Reasonable relationships prescribed.

Wm. T. Lee, Geo. P. Pell, and A. J. Maxwell, commissioners, and *Edgar Watkins*, attorney, for Corporation Commission of North Carolina.

J. H. Fishback and D. Lynch Younger for commercial organizations of various North Carolina cities.

F. R. McNinch for Charlotte Shippers & Manufacturers Association, intervener.

Charles J. Rixey, jr., for Director General of Railroads and defendant carriers under federal control.

REPORT OF THE COMMISSION.

EASTMAN, *Commissioner*:

In this proceeding a proposed report was prepared by the examiner and submitted to the parties. This report is based thereon with such modifications as seemed necessary after consideration of the record and of the exceptions which were filed.

In No. 10500, the Corporation Commission of the state of North Carolina, hereinafter referred to as the Corporation Commission, by complaint filed March 10, 1919, attacks the rates, both class and commodity, between points in the central and eastern portions of North Carolina and points in South Carolina, Georgia, Florida, Alabama, and Mississippi, alleging that they are unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of sections 1, 2, and 3 of the act to regulate commerce. The allegations of discrimination and prejudice are based upon the present relationship between the rates under attack and those effective between the Virginia cities and the same territory. The complaint in No. 10515, filed March 15, 1919, is brought by commercial organizations of the

¹ This report also embraces No. 10515, Raleigh Chamber of Commerce et al. v. Director General, Seaboard Air Line Railway Company, et al.

cities of Raleigh, Greensboro, Henderson, Greenville, Fayetteville, Wilson, Zebulon, Rocky Mount, Goldsboro, and Durham, N. C., and is similar but broader in scope, attacking the rates between points in North Carolina and points in New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware, as well as those effective to and from the above-named southern states, with which is included Tennessee. All of these rates are alleged to be unlawful both under sections 1, 2, and 3 of the act to regulate commerce and under section



10 of the federal control act. Associations representing the shippers of the cities of New Bern, Washington, and Tarboro, N. C., joined in the complaint by intervention. A similar association representing the shippers of Charlotte, N. C., intervened to protect their interests but offered no evidence and took no part in the proceedings. The cases were heard together and will be disposed of in one report.

THE SOUTHERN ADJUSTMENT.

The territory principally involved in the southern adjustment under attack is shown on the accompanying map. The complaining cities, as well as the Virginia cities upon whose rates the allegation of

prejudice is founded, are indicated in heavy black. Of the Virginia cities, the principal competitors of the North Carolina points appear to be Norfolk and Richmond, and much of the evidence adduced deals with their rates and traffic in comparison with the rates and traffic of Raleigh, which is centrally located among the complaining cities. The attack is directed primarily against the class rate adjustment, and for the sake of simplicity the discussion will be confined chiefly to the first-class rates, stated in cents per 100 pounds.

Generally speaking, the class rates southbound from a large territory covering the central and eastern portions of North Carolina, represented by the complaining cities, to points in states south and west thereof, except a portion of the state of Georgia, are the same as from Richmond, Petersburg, Norfolk, Portsmouth, Suffolk, Lynchburg, Roanoke, Danville, Emporia, and other points of less importance in southern Virginia. To certain points in northern Georgia, in what is known as Atlanta territory, the North Carolina rates are lower than the Virginia cities rates by 8½ or 9 cents, first class. Just south of Atlanta, in what is known as Columbus territory, there is a similar differential of 2½ cents. Atlanta territory is represented on the map by triple lines, Columbus territory by double lines. Northbound these differentials do not exist, and from all the southern territory the rates to the North Carolina cities are, in general, the same as or higher than the rates to the Virginia cities. With this preliminary statement, the following comparison of distances and present rates between Richmond and Raleigh and representative points in South Carolina, Georgia, Alabama, and Mississippi is presented:

Comparison of distances and first-class rates from Richmond, Va., and from Raleigh, N. C., to various points in South Carolina, Georgia, Alabama, and Mississippi.

To—	From Richmond.			From Raleigh.		
	Miles.	Rate.		Miles.	Rate.	
		South-bound.	North-bound.		South-bound.	North-bound.
		<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Darlington, S. C.....	208	100	100	147	100	100
Chester, S. C.....	326	100	100	194	100	100
Spartanburg, S. C.....	358	105	105	250	105	105
Greenwood, S. C.....	400	105	105	268	105	105
Camden, S. C.....	327	102.5	102.5	171	102.5	102.5
Columbia, S. C.....	360	95	95	203	95	95
Sumter, S. C.....	332	102.5	102.5	186	102.5	102.5
Denmark, S. C.....	397	106.5	106.5	251	106.5	106.5
Gainesville, Ga.....	496	125	105	358	116	120
Athens, Ga.....	481	125	105	349	116	105
Atlanta, Ga.....	549	125	105	421	116	106
Griffin, Ga.....	592	127.5	105	464	125	111.5
Columbus, Ga.....	665	127.5	105	537	125	117.5
Macon, Ga.....	568	125	100	411	125	111.5
Waycross, Ga.....	597	122.5	145	441	132.5	142.5
Albany, Ga.....	675	134	100	517	134	124
Augusta, Ga.....	443	100	95	366	100	95
Birmingham, Ala.....	713	134	105	558	134	117.5
Opelika, Ala.....	683	140	105	530	140	117.5
Montgomery, Ala.....	724	134	105	596	134	117.5
Decatur, Ala.....	712	142.5	107.5	634	142.5	116.5
Mobile, Ala.....	902	125	115	775	125	125
Jackson, Miss.....	865	159	105	741	159	126
Hattiesburg, Miss.....	961	170	145	837	170	137.5
Greenwood, Miss.....	950	159	195	837	159	137.5
Gulfport, Miss.....	942	170	141.5	824	170	137.5
	975	125	115	847	125	137.5

Stating the situation concisely, on traffic to and from the south the North Carolina cities are either grouped with or have higher rates than the Virginia cities, except to the restricted differential territory in northern Georgia, while, as will later appear, there is far from being any similar and compensating grouping in the case of traffic to and from the north. The result is that merchants in the Virginia cities have a decided advantage over their North Carolina competitors. Witnesses engaged in business at various points in the latter state testified that they find it difficult to reship in competition with dealers at the Virginia cities, and that it is a common practice of North Carolina jobbers to supply their customers by ordering direct shipment from the wholesalers or from warehouse at Norfolk to final destination. North Carolina manufacturers who ship under class rates are at a similar disadvantage, modified to the extent that they are able to procure their raw material locally.

On tobacco, commodity rates which are the same as the class rates apply from both Virginia cities and North Carolina points. Southbound commodity rates on other articles, including furniture, cotton piece goods, and vehicles, were revised from Virginia cities in 1916, following our decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, but not as yet from North Carolina, with the result that the present rates on these articles for the time being are somewhat lower from North Carolina points than from Virginia cities to most points in the southeast. On certain articles there are commodity rates northbound to North Carolina points while class rates apply to the Virginia cities, but in such cases the commodity rates appear to have been established in recognition of a larger volume of movement to North Carolina. The record does not deal exhaustively with the commodity-rate situation and the above are the salient features which were developed.

The rates from Charlotte, N. C., to the south are an exception to the general rule, being materially lower than from the Virginia cities; and, without alleging undue preference of Charlotte, complainants cite its rates as an indication of consideration which should be extended by defendants to other North Carolina points. Wilmington, N. C., which is a seaport but is not served at present by any steamship lines, is a similar exception.

Defendants failed to show differences in transportation conditions which would justify disregard of mileage and the according of any material relative advantage to the Virginia cities over North Carolina points on traffic to and from the south, and the position in support of which their evidence and argument were mainly directed is that the rates between the Virginia cities and the south are extremely low; that the same rates are not unreasonable for application to and from North Carolina; and that by reason of the Virginia

cities adjustment North Carolina has lower rates than it would otherwise enjoy. Defendants do not object to the introduction of a mileage scale but deprecate any reduction of present rates, in view of their revenue needs. They admit that there is no justification for according differentials to Atlanta and Columbus territories and failing to maintain similar differentials to intermediate points, and concede that the northbound adjustment should be the same as the southbound.

Defendants entered with considerable detail into the history of southern adjustments, and the main facts will aid in understanding their contentions. Many years ago the Richmond & Danville, now a part of the Southern Railway system, established rates from Richmond and West Point, Va., the latter then being its deep-water terminus on the north, to Atlanta and neighboring points with a view to securing traffic in competition with the ocean-and-rail routes from the east to the same southern territory by way of the south Atlantic ports. At one time, it is said, the rates from Richmond and West Point to Atlanta and group were no higher than from Charleston, S. C., and Savannah, Ga., to the same destinations. In 1882, the rates from Virginia cities—the Richmond and West Point rates having been established from Norfolk—were made higher by a 10-cent differential, first class, than from Charleston and Savannah, the new scale beginning at 90 cents. Two years later, in connection with a general reduction in rates from the east, a 79-cent scale from Virginia cities became effective, which was succeeded in 1888 by an 84-cent scale. The latter increase is ascribed to the dissatisfaction of other Virginia cities lines and of carriers operating between the Ohio River and the south with the low schedule of the Richmond & Danville. The 84-cent scale was applied to Athens and Rome, Ga., Chattanooga, Tenn., Birmingham and other base points as well as to Atlanta, but the rates to intermediate points were usually made by combination on the nearest base points, resulting in higher local rates and frequent fourth section violations. In 1905, as a result of negotiations in which the Railroad Commission of the state of Georgia and the Atlanta interests took part, described in *Morgan Grain Co. v. A. C. L. R. R. Co.*, 19 I. C. C., 460, and again referred to in *Fourth Section Violations in the Southeast, supra*, the Virginia cities-Atlanta rates were reduced to an 80-cent scale. This remained in effect until 1914, when, as a result of complaint from Macon, Ga., the 84-cent scale was restored and the rates to Columbus, Birmingham, and Selma, Ala., placed upon an 87-cent scale. The same mutations applied to the northbound rates.

The practice of maintaining higher rates at intermediate or local points than at junction or basing points in the southeast, already mentioned, was investigated by us, *Fourth Section Violations in the* 57 I. C. C.

Southeast, supra, the original report being supplemented and modified in 32 I. C. C., 61. Under this decision the carriers were permitted to continue lower rates from the east via Potomac Yard or Norfolk to the south Atlantic ports and to various interior water-competitive points than to intermediate points, but were denied a similar privilege at Atlanta and other base points where no similar competition prevailed. Thereupon the carriers entered upon a general revision of their rates in the southeast. Although uncompleted, the partial results were embodied in tariffs which became effective January 1, 1916. The revision included the class rates and some of the commodity rates from Virginia and North Carolina to southeastern territory west of the South Carolina-Georgia state line, but did not include rates to South Carolina or any of the northbound rates. This accounts for the present maladjustment between the northbound and the southbound rates. Defendants also explain the differentials now accorded Charlotte by the statement that its rates were not covered in this revision. The class rates from the Virginia cities were increased from the 84-cent scale to a 100-cent scale, but the long-standing general parity between the Virginia cities and North Carolina points to the southeast was partially abandoned, the North Carolina points being given differentials under the Virginia cities of 7 cents and 2 cents—now $8\frac{1}{2}$ or 9 cents and $2\frac{1}{2}$ cents—to the Georgia differential territory previously described. To south Georgia and other southeastern territory outside the differential group the former rate parity was continued, and it was extended to certain points in Florida where it had not before existed. Northbound the 84-cent scale remained in effect, and in many instances the rates to intermediate points in the Carolinas are higher than to the Virginia cities. Under General Order No. 28 of the Director General of Railroads, effective June 25, 1918, the rates both northbound and southbound were uniformly increased 25 per cent, so that the rate from Virginia cities to Atlanta became \$1.25 and the corresponding northbound rate \$1.05.

Notwithstanding the material increase in the southbound Virginia cities rates, effective January 1, 1916, and the further increase under General Order No. 28, defendants insist that those rates are still "subnormal." They submit numerous rate comparisons, but cite particularly the water-and-rail rates from Baltimore, Md., to the southeast. Prior to January 1, 1916, the first-class water-and-rail rate from Baltimore to Atlanta was 98 cents. In the revision it became \$1.07 as compared with the rate of \$1 from the Virginia cities. Under authority given in *The Fifteen Per Cent Case*, 45 I. C. C., 303, this Baltimore rate was increased to \$1.13, effective in September, 1917, and under General Order No. 28 became \$1.41 $\frac{1}{2}$, the

present rate, which is 16½ cents higher than the present Virginia cities rate and 7½ cents lower than the all-rail rate from Baltimore. The distance from Baltimore to Atlanta, using 250 miles as the constructive distance by water from Baltimore to Savannah, is 510 miles, as against the short-line rail distance of 549 miles from Richmond to Atlanta. Defendants assert that there was no competitive or transportation reason why the Virginia cities should not have been placed upon the Baltimore water-and-rail basis in the revision of January 1, 1916, and that they were deterred from adopting that basis only by the disturbance that would have been caused by so radical a change in the Virginia cities rates. As it was, the increase from Virginia cities was 16 cents, first class, as against an increase of 9 cents from Baltimore. To many other points in the southeast, as well as to Atlanta, the rates from Baltimore were increased by less amounts than the rates from Virginia cities, and this change in relationship has been attacked by the Corporation Commission of Virginia in No. 9404, *State Corporation Commission of the Commonwealth of Virginia v. Southern Railway Company et al.*, now pending. That complaint also calls in question the reasonableness of the rates between the Virginia cities and the southeast.

Numerous rate comparisons were submitted by defendants in evidence of the reasonableness of the present rates from North Carolina. The comparisons include many individual rates, some of which apply in distant territories, as well as class-rate scales initiated by the carriers or prescribed by us or by state commissions. It is necessary to confine attention in this report to such as appear best entitled to weight. Comparisons relating to the rates to South Carolina are here presented:

Statement of present class rates between North Carolina points and South Carolina points as compared with present rates between various points, including rates established or not found unreasonable by the Interstate Commerce Commission, for comparable distances.¹

Between—	And—	Distance.	Classes—Rates in cents per 100 pounds.						
			1	2	3	4	5	6	A
Durham, N. C.	Denmark, S. C.	260	106½	94	77½	62½	50	40	30
Henderson, N. C.	Carlisle, S. C.	256							
Sanford, N. C.	Calhoun Falls, S. C.	267							
Raleigh, N. C.	Greenwood, S. C.	269							
Sanford, N. C.	Anderson, S. C.	269	106	99	80	65	54	50	30
Durham, N. C.	Greenwood, S. C.	275							
Raleigh, N. C.	Abbeville, S. C.	284							
Henderson, N. C.	Clinton, S. C.	285							
Durham, N. C.	Abbeville, S. C.	290							
Henderson, N. C.	Denmark, S. C.	292	106½	94	77½	62½	50	40	30
Raleigh, N. C.	Calhoun Falls, S. C.	299	106	99	80	65	54	50	30

Statement of present class rates between North Carolina points and South Carolina points as compared with present rates between various points, including rates established or not found unreasonable by the Interstate Commerce Commission, for comparable distances—Continued.

	Distance.	Classes—Rates in cents per 100 pounds.						
		1	2	3	4	5	6	A
Natches scale (52 I. C. C., 105).....	251-275	112	95	79	67	54	.....	.....
	276-300	115	97½	80½	69	55	.....	.....
Memphis-Southwestern scale (55 I. C. C., 515).....	251-260	111½	94½	78½	67	53½	.....	.....
	261-280	116½	99	81½	70	55½	.....	.....
	281-300	120	102	84	72	57½	.....	.....
	246-260	120	102½	84	68	53	.....	.....
Memphis-Arkansas scale (43 I. C. C., 121).....	261-275	125	106½	87½	70½	55	.....	.....
	276-300	131½	111½	92½	74½	58	.....	.....
	246-260	121½	102½	85	72½	61½	.....	.....
Memphis-Arkansas-Louisiana scale (39 I. C. C., 224)²	261-275	126½	107½	89	76½	64	.....	.....
	276-300	131½	111½	92½	79	66½	.....	.....
Houston, Tex., to Boyce, La. (32 I. C. C., 247).....	258	171½	144	117½	109	86½	.....	.....
New Orleans to Beaumont, Tex. (38 I. C. C., 1).....	278	107½	94	81½	69	55	.....	.....
Washington-Oregon-Montana-Idaho scale (21 I. C. C., 640).....	201-300	114	96½	80	69	57½	.....	.....
Billings, Mont., to Minturn, Wyo. (19 I. C. C., 71).....	252	129	114	90	80	.....	.....	.....
Billings, Mont., to Wessex, Wyo. (19 I. C. C., 71).....	266	131½	117½	91½	82½	.....	.....	.....
Calro, Ill., to Rison, Ark.	290	131	112½	86½	69	51½	.....	.....
Opelika, Ala., to Scarboro, Ga.	249	116½	110	87½	76½	62½	50	46½
Augusta, Ga., to Palestine, Ala.	245	105	96½	81½	72½	64	46½	472
Opelika, Ala., to Oliver, Ga.	274	117½	110	91½	79	66½	54	40½
Columbus, Ga., to Venetia, Ala.	280	114	104	84	66½	57½	49	41½
Chattanooga, Tenn., to Bradley, Ga.	279	111½	97½	87½	71½	57½	46½	44
Augusta, Ga., to Gray, Ala.	278	105	94	84	69	64	47½	42½

¹ All rates cited include the 25 per cent increase authorized by General Order No. 28.

² The scale prescribed was for 200, 300, 400, and 500 miles, and it was stated that the carriers would be expected to graduate their rates for intermediate distances in harmony with the rates prescribed.

The North Carolina points selected for these comparisons, although fairly representative, do not disclose the more striking effects of the large groupings. It is made evident by defendants' comparisons that the average rates from North Carolina to South Carolina are not higher than many other southern rates carried in the tariffs, but in some instances the rates for the shorter distances are clearly excessive. For example, from Fayetteville, N. C., to Camden, S. C., the first-class rate is \$1.02½ for a distance of 136 miles; and from Aberdeen, N. C., a point near the South Carolina state line, the rate to McColl, S. C., 42 miles distant, is 90 cents.

In the following table, which shows the first-class rates from Greensboro, Raleigh, and Fayetteville, respectively, to successive stations in South Carolina and beyond, on the lines of the Southern, Seaboard Air Line, and Atlantic Coast Line, the disproportion between the rates to South Carolina and those to more distant territory is clearly apparent, particularly when comparison is made with the rates, also shown in the table, which result from the application of the mileage scale prescribed in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105.

	Miles.	Present first-class rate.	First-class rate under c. f. a. scale for zone A roads increased 15 and 25 per cent.	First-class rate under Natchez scale. (Includes 25 per cent increase.)
GREENSBORO, N. C., TO—				
Blacksburg, S. C.....	141	89	50.5	81.5
Spartanburg, S. C.....	168.9	91.5	53	89
Greenville, S. C.....	200.4	96.5	57.5	99
Easley, S. C.....	212.4	97.5	59	101.5
Seneca, S. C.....	239.9	99	60.5	106.5
Foccoa, Ga.....	267.4	107.5	62.5	112
Gainesville, Ga.....	307.3	116	66.5	118
Atlanta, Ga.....	360.6	116	70.5	124.5
Birmingham, Ala.....	527.4	134	82	.....
RALEIGH, N. C., TO—				
Catawba, S. C.....	173.8	100	54.5	91.5
Chester, S. C.....	194.2	100	57.5	96.5
Carlisle, S. C.....	211.2	105	59	101.5
Clinton, S. C.....	239.9	105	60.5	106.5
Greenwood, S. C.....	267.7	105	62.5	112
Abbeville, S. C.....	282.8	105	64	115
Elberton, Ga.....	314.1	107.5	66.5	118
Athens, Ga.....	348.5	116	69	121.5
Atlanta, Ga.....	421.4	116	75	130.5
Birmingham, Ala.....	587.7	134	86.5	.....
FAYETTEVILLE, N. C., TO—				
Bennettsville, S. C.....	57.9	66.5	37.5	49.5
Darlington, S. C.....	83.2	81.5	41.5	59
Charleston, S. C.....	184	85	56.5	94
Savannah, Ga.....	299	104	65	115
Jesup, Ga.....	356	132.5	69	124.5
Waycross, Ga.....	395	132.5	72	127.5
Valdosta, Ga.....	455	134	76.5	137
Thomasville, Ga.....	498	134	79.5	140

Numerous exhibits submitted by defendants show that the rates from the Virginia cities and North Carolina to the southeast are, in general, on a substantially lower basis, distance considered, than the rates to the same territory from Ohio and Mississippi river crossings, New Orleans, Chattanooga, Birmingham, and other points. The following table is illustrative of these exhibits:

From—	Atlanta, Ga.		Montgomery, Ala	
	Distance.	Rate	Distance.	Rate
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Baltimore, Md. (water and rail).....	510	141.5	588	147.5
Raleigh, N. C.....	421	116	596	134
Cincinnati, Ohio.....	474	134	579	135
New Orleans, La.....	496	134	318	111.5

From—	Columbus, Ga.		Thomasville, Ga.		Meridian, Miss.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Baltimore, Md.....	516	141.5	451	141.5	742	159
Raleigh, N. C.....	537	125	544	134	741	159
Cincinnati, Ohio.....	577	146.5	721	181.5	632	154
New Orleans, La.....	413	134	461	150	202	94

The Baltimore distances in the above table are based upon the "constructive distance" of 250 miles from Baltimore to Savannah by water which has for many years been used as the equivalent in mileage by rail, but under present conditions it may well be doubted whether this constructive mileage accurately represents the ratio between the costs of rail and water transportation.

Defendants further contend that conditions in the Carolinas and the southeast warrant rates as high in that section as in the southwest and that if a distance scale is prescribed it should not be lower than the scales which we have approved for use in the southwest. They submit on brief the following statement, condensed from exhibits filed at the hearing:

	Per mile of road, fiscal years ended June 30—			
	1913	1914	1915	1916
Southeastern roads:				
Operating revenue.....	\$9, 177. 35	\$9, 296. 36	\$8, 158. 33	\$9, 135. 74
Operating expenses.....	6, 736. 54	6, 875. 07	6, 133. 35	6, 283. 98
Net operating revenue.....	2, 440. 81	2, 421. 29	2, 024. 98	2, 871. 88
Operating income.....	2, 100. 57	2, 080. 81	1, 651. 72	2, 460. 45
Freight revenue.....	6, 295. 48	6, 361. 20	5, 669. 49	6, 493. 52
Traffic density..... ton-miles..	739, 977	751, 228	699, 141	818, 599
Operating ratio..... per cent..	73. 40	73. 96	75. 18	68. 50
Southwestern roads:				
Operating revenue.....	\$9, 385. 90	\$8, 807. 51	\$8, 825. 99	\$9, 682. 62
Operating expenses.....	6, 587. 33	6, 358. 47	6, 243. 77	6, 717. 41
Net operating revenue.....	2, 798. 57	2, 549. 04	2, 582. 22	2, 965. 21
Operating income.....	2, 431. 04	2, 119. 72	2, 164. 97	2, 310. 85
Freight revenue.....	6, 410. 11	6, 032. 01	6, 155. 71	6, 768. 72
Traffic density..... ton-miles..	674, 171	640, 938	660, 223	755, 420
Operating ratio..... per cent..	70. 18	71. 54	70. 74	69. 36

The value of this comparison is impaired by the inclusion of statistics of lines extending beyond the territories compared.

In *Memphis-Southwestern Investigation*, 55 I. C. C., 515, we stated that for the year ended June 30, 1916, the ton-miles of revenue freight per mile of road in Arkansas amounted to 718,632, in Oklahoma to 635,977, in Louisiana to 672,480, and in Texas, including differential territory, to 570,268. According to annual reports filed with us the similar statistics of some of the principal southwestern lines for the same period, compared with those of the principal defendant lines, were as follows:

Road.	Ton-miles of revenue freight per mile of road.
St. Louis-San Francisco.....	757, 420
St. Louis, San Francisco & Texas.....	267, 566
Missouri, Kansas & Texas.....	863, 488
St. Louis Southwestern.....	751, 125
St. Louis Southwestern of Texas.....	306, 000
Gulf, Colorado & Santa Fe.....	733, 058
Houston & Texas Central.....	527, 413
International & Great Northern.....	620, 631
Southern.....	719, 579
Seaboard Air Line.....	542, 517
Atlantic Coast Line.....	531, 883

However, comparison of ton-miles is of little value without consideration of the nature of the traffic, and the reports show that the southwestern lines carry a much greater proportion of low-grade traffic than do the southeastern lines.

Defendants show that the western classification, which governs in southwestern territory, rates many articles higher than they are rated in the southern classification, which governs in southeastern territory. They urge that the same scale of rates will produce more revenue under the western classification than under the southern, and that rates in the southeast should therefore not be lower than in the southwest.

In the *Consolidated Classification Case*, 54 I. C. C., 1, 7, we said:

* * * So far as transportation conditions are concerned, the southwest, east of differential territory in Texas, is believed to be more nearly analogous to the southeast than is any other section of the country. We have compared a number of representative class rates in the southeast with those in that portion of the southwest above referred to, which were prescribed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, and in the *Southwestern Class Case*, 48 I. C. C., 379. We find that for distances over 100 miles the rates in the southeast are generally substantially lower than those in the southwest, while for distances under 100 miles the rates in the southeast are in some instances higher and in others lower than those in the southwest. Upon the whole, it appears that the class rates in the southeast are on a considerably lower level than in the southwest.

Complainants point out that the central and eastern portions of North Carolina are served by the three principal railroads which connect the south with the populous centers of the east, that the density of revenue-paying freight per mile of line for these three roads is materially greater in North Carolina than on their entire systems, and that these roads in general have been distinctly more prosperous than those in the southwest. They deny that the Virginia cities rates are "subnormal," calling attention to the several substantial increases which have been made since 1914, and claiming that the long maintenance, prior to the revision of 1916, of rates relatively lower than the present rates is evidence that the latter are, if anything, too high rather than too low. *A fortiori* they argue that the present rates from North Carolina points to the southeast are unreasonable.

Defendants admit that the present adjustment of rates to and from southern territory is in certain respects indefensible, particularly in the case of the northbound rates and of the rates between North Carolina and South Carolina, but ask to be permitted to resume and complete the task of revision under our order in *Fourth Section Violations in the Southeast, supra*, which was suspended during the period of federal control. The necessity for the suspension is not made entirely clear, and still less the necessity for the previous long delay.

Nor do defendants indicate with any degree of definiteness the principles that would govern the proposed revision, beyond expressing the opinion that no readjustment of the rates between North Carolina and South Carolina should precede a revision upward of the rates between Virginia cities and South Carolina, and that any revision of either should take into consideration the rates from the southeast to the same territory. They further indicate a belief that the present wide blanketing of North Carolina territory in rates to and from South Carolina is improper and should be succeeded by a mileage scale, but state that every attempt to construct such a scale has returned them to the Virginia cities rates at relatively short distances as a reasonable basis. Apparently no revision that they might voluntarily undertake would give North Carolina the advantage of differentials to points in the southeast lying beyond the present differential territory in northern Georgia.

The Corporation Commission proposed a scheme of class rates for application between North Carolina and the southern territory upon distance ratios after allowing 25 cents per 100 pounds as a fair charge for two terminal services. Assuming the short-line distance from the Virginia cities to be 150 miles greater than from the North Carolina cities, this being approximately the advantage in distance of Raleigh over Richmond or Norfolk, it is the conclusion of complainants that the first-class differential to South Carolina should be about 30 cents; to Georgia territory and Jacksonville, Fla., 25 cents; to Alabama, 20 cents; and to Mississippi, 15 cents. The Corporation Commission also suggested a mileage scale for distances up to 160 miles, subject to maximum differentials beginning with 32 cents first class under Richmond and Norfolk, for application between North Carolina and South Carolina. The suggested scale is fairly comparable with the North Carolina intrastate scale, and would result in drastic reductions in present rates from North Carolina to South Carolina. Complainants express no view as to whether the present grouping of North Carolina points should be continued or should be replaced by a distance scale.

Two main questions are presented by the complaints: (1) Whether the rates in issue are unreasonable and (2) whether they are unduly prejudicial. Unjust discrimination under section 2 is also alleged, but no evidence of such discrimination was offered. With respect to the first question the record does not warrant a conclusion that the rates are unreasonable under present conditions except in some cases between North Carolina and South Carolina points. For present purposes it is unnecessary to bring this finding within more definite limits, for no reparation is sought and the burden of the complaints is the relationship between the Virginia cities and North Carolina points.

Passing to the second question, it is not claimed that there are any transportation or commercial conditions which justify the blanketing of North Carolina points with Virginia cities in the southern rate adjustment in disregard of the element of distance. Upon only one theory could justification be offered, and that is that the Virginia cities rates are held down by circumstances beyond defendants' control, such as water or carrier competition. No water lines operate between Virginia cities and south Atlantic ports, and the only claim of this nature which defendants have seriously made is that under the fourth section Virginia cities rates may not exceed the rail-and-water rate from Baltimore, which applies through Norfolk as well as through south Atlantic ports. Inasmuch as this Baltimore rate is now $16\frac{1}{2}$ cents higher than the Virginia cities rates at Atlanta, and generally higher at other points, the differential diminishing as distance increases, it is apparent that substantial leeway exists under this restriction, even if the claim be regarded as valid.

The record warrants the conclusion, therefore, that the present southern adjustment is in general unduly prejudicial to North Carolina points and unduly preferential of the Virginia cities. In determining how this situation may be corrected, the problem is complicated by the extent of the blanket which now covers Virginia cities and North Carolina territory. Complainants direct their attention chiefly to Richmond and Norfolk, and introduced evidence that these cities are, on an average, 219 miles farther distant from points in the southeast than are the complaining cities in North Carolina. The cities in that state near the South Carolina border, however, might well bring a similar complaint against the cities near the Virginia border, and when comparisons are made with other Virginia cities than Richmond and Norfolk the disparity is much less apparent. Lynchburg, for example, is but 53 miles more distant from Atlanta than is Raleigh, but 1 mile more distant from Birmingham, and to certain points in Mississippi its distance is less. In many instances the distances from Roanoke are less than from Lynchburg.

One method of meeting the situation would be the establishment of a uniform distance scale, applying locally between the Virginia cities and North Carolina territory, on the one hand, and points in the southeast, on the other. We hesitate, however, to adopt this method because of the possible far-reaching consequences of the introduction of such a scale throughout the southern territory. The determination of the general level of a distance scale, of the percentage relationships of its various classes, and of the rates of progression with increasing distance are questions of importance and difficulty which require careful study and the consideration of

data which are not available in the present record. Sufficient notice has not been given or opportunity afforded for the hearing of the many and diverse interests which would be affected by and concerned in the establishment of such a scale. Moreover, it would be necessary to consider its possible effect upon traffic to and from western points passing through the Virginia gateways.

Objections, however, to the correction of the southern adjustment by the immediate adoption of a distance scale should not, we think, stand in the way of affording such relief to complainants as the present record permits. The complaining cities have long been subjected to the burden of undue prejudice and may fairly ask that this burden be removed or lightened without delay by such means as are presently available. This can be done, in our opinion, by prescribing a differential relationship which will result in a more equitable rate adjustment than that now existing.

We therefore find that the class-rate adjustment attacked is unduly prejudicial to North Carolina points in zones ¹ 1, 2, 3, and 4, and unduly preferential of Norfolk and Richmond, to the extent that the first-class rates from or to the North Carolina points exceed rates which are lower than the first-class rates from or to Norfolk or Richmond by the following differentials, and to the extent that the rates from or to the North Carolina points on the other classes exceed rates which are lower than the corresponding class rates from or to Norfolk or Richmond by differentials which are the same percentage of the first-class differentials found reasonable as the rates on the other classes from or to Norfolk or Richmond are of the corresponding first-class rates.

Differential
(cents).

To or from all points in South Carolina, Georgia, and Tennessee on or east of a line drawn through Jellicoe and Knoxville, Tenn., Franklin, N. C., Elberton and Augusta, Ga.; thence along the line of the Charleston & Western Carolina Railway to Port Royal, S. C.	30
To or from all points in South Carolina, Georgia, Alabama, and Tennessee west of the line above described and on, east, or north of a line drawn from Gallatin to Murfreesboro, Tenn.; thence along the line of the Nashville, Chattanooga & St. Louis Railway to Stevenson, Ala.; thence through Fort Payne, Ala., and La Grange, Ga., to Americus, Ga.; thence along the line of the Seaboard Air Line to Cordele, Ga.; thence along the line of the Atlanta, Birmingham & Atlantic Railway to Brunswick, Ga.	20
To or from all points in Tennessee, Mississippi, Alabama, and Florida west or south of the line next above described.	10

It will be noted that this finding does not include all the Virginia cities but is restricted to the relationship between North Carolina points and Richmond and Norfolk. Complainants' evidence was largely directed to this relationship, and the record indicates that it

¹ These zones are described in the appendix to this report.

is in competition with these two Virginia points that the North Carolina cities chiefly feel the burden of the present adjustment. Moreover, differentials which are just and reasonable, so far as Richmond and Norfolk are concerned, would not be equitable in their application to certain of the other Virginia cities. For the purposes of speedy relief we think that the finding may properly be limited to Richmond and Norfolk and that adjustments of the rates to and from other Virginia cities may for the present be left to the initiative of defendants. For similar reasons it has not seemed desirable at this time to break up the present grouping of the North Carolina points and attempt the construction of smaller groups with varying differentials.

The record is not sufficiently complete to enable us to prescribe a commodity-rate adjustment, but, in general, the commodity rates from or to the North Carolina points should be lower than the commodity rates from or to Norfolk or Richmond by minimum differentials which are the same percentage of the differentials found reasonable between the rates on the class under which the commodity is rated as the commodity rate bears to the class rate. This is not to be understood as authority for placing on the class-rate basis from or to North Carolina points such articles as now take commodity rates from or to those points and class rates from or to Norfolk and Richmond, or vice versa. The defendants will be expected to revise their commodity-rate adjustment promptly in accordance with the views expressed.

THE NORTHERN ADJUSTMENT.

The complaint of the North Carolina cities against the rates from and to the north, like that against the southern adjustment, arises very largely from the rate relationship between the complaining cities and the Virginia cities. In the northern adjustment, the central and eastern portions of North Carolina are divided into four zones. All of the complaining cities, except Fayetteville, are situated in the northern zone, designated No. 1, and with a few minor exceptions take the same rates. The rates to and from Fayetteville, which is in zone 2, are usually higher on the first five classes and lower on the remaining classes. Prior to June 25, 1918, zone 2 points generally took the following differentials over zone 1 points on the first six classes:

1	2	3	4	5	6
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
7	7	6	6	5	4

As a consequence of the increases under General Order No. 28 the differentials now vary to and from different localities in the northern territory. While state-wide relief is sought, the evidence is confined

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to the situation at points in zones 1 and 2, and our report and conclusions will therefore be limited to the rates to and from those zones, leaving to the carriers such adjustment of the rates to and from points in zones 3 and 4 as may be made necessary by our conclusions herein.

The rates from the north to the Virginia cities usually vary somewhat with the distances to the different cities, Norfolk, on the east, as a rule, taking the lowest rate, and Roanoke, on the extreme west, the highest. Generally, the northbound rates from both the Virginia cities and North Carolina are the same as the southbound rates and it is agreed that there is no reason why they should be different. The rates to the Virginia cities are governed by the official classification and those to North Carolina by the southern classification.

The rates to Richmond may be regarded as fairly representative; and Richmond, together with Norfolk, bears the principal burden of the attack. Complainants' comparisons deal almost exclusively with all-rail rates, and the all-rail traffic between the north and North Carolina moves largely through Richmond. In seeking representative comparisons of rates and distances in connection with all-rail traffic we shall therefore select Richmond and Raleigh as representative of the two groups of cities. The first-class rates may again be taken as typical of the class rates.

Comparison of distances and first-class rates, all rail, from representative northern points to Richmond, Va., and Raleigh, N. C.

From—	To Richmond, Va.		To Raleigh, N. C.		Difference in distance.		Difference in rate.	
	Miles.	Rate	Miles.	Rate	Miles.	Per cent.	Cents.	Per cent.
		<i>Cents.</i>		<i>Cents.</i>				
Boston, Mass.....	556	68	713	126.5	157	28.3	58.5	86
New York, N. Y.....	344	59.5	501	120	157	45.7	60.5	105
Philadelphia, Pa.....	252	59.5	409	120	157	62.3	60.5	105
Baltimore, Md.....	186	48.5	313	112.5	157	100.7	64	131.9
Springfield, Mass.....	478	68	635	126.5	157	32.8	58.5	86
Albany, N. Y.....	486	73	643	122.5	157	32.3	49.5	67.8
Elmira, N. Y.....	408	73	565	122.5	157	38.6	49.5	67.8
Rochester, N. Y.....	504	73	661	122.5	157	31.2	49.5	67.8
Buffalo, N. Y.....	551	83.5	708	139	157	28.5	55.5	60.4
Scranton, Pa.....	376	73	533	120	157	41.7	47	64.4
Harrisburg, Pa.....	240	73	397	112.5	157	65.4	39.5	54.1
Pittsburgh, Pa.....	418	83.5	575	135	157	37.5	61.5	61.6

Witnesses for the defendants testified that the bulk of the traffic to North Carolina from the eastern seaboard cities and much of that from interior New England points moves by the water-and-rail route through Norfolk. Reference to Norfolk should be here understood to include the adjacent port of Portsmouth. The water-and-rail rates from eastern port cities to North Carolina points are lower

than the all-rail by a differential scale, varying slightly at some points but usually beginning with 7½ cents first class. From interior eastern points the first-class differential is usually 5 cents. The constructive distances by water to Norfolk, used by the carriers in the division of through rates, are 200 miles from Boston or Providence, 160 miles from New York, and 100 miles from Baltimore. On behalf of the Corporation Commission it was testified that the average distances from Richmond and Norfolk were 164 miles to zone 1, 210 miles to zone 2, 245 miles to zone 3, and 255 miles to zone 4.

The joint rates from the north to North Carolina points are lower than the combinations on Virginia cities, as shown by the following representative examples:

Comparison of joint rates, first class, all rail, and water and rail, to Durham, Raleigh, Greensboro, Henderson, Goldsboro, and Wilson, N. C., from points shown, with combinations on Virginia cities.

	From—					
	New York, N. Y.	Philadelphia, Pa.	Baltimore, Md.	Albany or Rochester, N. Y.	Harrisburg, Pa.	Williamsport, Pa.
Combination on Virginia cities.....	131	129	125	149.5	149.5	149.5
Through rate, all rail.....	120	120	112.5	122.5	112.5	120
Percentage of combination rate.....	91	93	90	82	76	80
Through rate, water and rail.....	112.5	112.5	105	.....	.....	.....
Percentage of combination rate.....	86	87	84	.....	.....	.....

Complainants expressly disclaim any complaint against the rates from the Virginia cities to North Carolina, confining their attack to the through rates regardless of their components, alleging their unreasonableness and their undue prejudice to North Carolina shippers. We have already noted the disadvantage of North Carolina jobbers due to the blanketing of rates from Virginia cities and North Carolina southbound. The great disparity between rates from the north to Virginia cities and to North Carolina cities, respectively, has a similar effect. For example, the rate disadvantage of the jobber at Raleigh in shipping first-class traffic from New York to Raleigh and reshipping to a large territory in northern South Carolina is 67 cents per 100 pounds, as compared with the jobber at Norfolk, and 60½ cents as compared with the jobber at Richmond. Comparison of commodity rates reveals similar or even greater disparities, and the North Carolina shippers find still further cause for complaint in the fact that the Virginia cities enjoy a greater number of commodity rates lower than class rates from the north than do the North Carolina cities. For example, the carload commodity rate on roasted coffee

from New York to Richmond is 25½ cents, while similar traffic from New York to the North Carolina cities is subject to the fifth-class rate of 59 cents. Other examples are of record, which is admittedly incomplete. Generally speaking, the differential basis of commodity rates from the east to North Carolina is similar to that of the class rates.

In support of their general allegations, complainants call attention to the fact that the traffic from the north and east, for the greater portion of the routes, moves through trunk line territory over lines of great traffic density, the Pennsylvania and the Baltimore & Ohio being the principal carriers between the northern cities and the Potomac River, that the lines extending from the Potomac to the Virginia cities serve as funnels for the passage of a very heavy traffic between the north and the south, and that the principal lines leading south from the Virginia cities perform a somewhat similar office, although the traffic diminishes toward the south. The Corporation Commission submitted statements showing that the density of freight traffic on the lines of the Southern Railway, Seaboard Air Line, and Atlantic Coast Line in the state of North Carolina is considerably greater than that of those lines as a whole. The complaining cities also compare the northern rates under attack with the central freight association scale of class rates, as increased. The following statement includes representative examples of this comparison, to which we have added a similar comparison with present rates to the Virginia cities:

From—	To—	Miles.	Present first-class rate.	First-class rate under c. f. a. scale for some A roads, increased 15 and 25 per cent.
New York, N. Y.....	Richmond, Va.....	344	50.5	69
Do.....	Raleigh, N. C.....	501	120	80.5
Philadelphia, Pa.....	Richmond, Va.....	252	50.5	62
Do.....	Raleigh, N. C.....	409	120	73
Baltimore, Md.....	Richmond, Va.....	156	48.5	52
Do.....	Raleigh, N. C.....	313	112.5	66.5
Albany, N. Y.....	Lynchburg, Va.....	544	85	83
Do.....	Greensboro, N. C.....	658	122.5	90.5
Rochester, N. Y.....	Richmond, Va.....	504	73	80.5
Do.....	Goldsboro, N. C.....	663	122.5	90.5
Harrisburg, Pa.....	Lynchburg, Va.....	298	79	65
Do.....	Durham, N. C.....	395	112.5	72
Pittsburgh, Pa.....	Richmond, Va.....	418	83.5	73
Do.....	Fayetteville, N. C.....	622	144	80.5

The rates from the eastern ports to Richmond and Norfolk, all-rail, which are the same as the water rates, are substantially lower than the central freight association scale, while the rates from eastern ports to Lynchburg and Roanoke and, to a large extent, at least, from interior eastern points to all Virginia cities are substantially

higher than that scale, as are also, but in greater measure, the through rates from all northern points to the North Carolina cities.

Complainants also cite individual rates for similar or greater distances than those here involved, of which the following are examples, taken from their brief:

	First-class rate.
Cincinnati, Ohio, to Raleigh, N. C., 607 miles.....	\$1.02½
Louisville, Ky., to Raleigh, N. C., 666 miles.....	1.02½
Chicago, Ill., to Richmond, Va., 865 miles.....	1.09½
Muncie, Ind., to Richmond, Va., 685 miles.....	.98½
Indianapolis, Ind., to Richmond, Va., 690 miles.....	1.01½
Cleveland, Ohio, to Richmond, Va., 562 miles.....	.83½
Augusta, Ga., to Huntsville, Ala., 408 miles.....	.96½
Charleston, S. C., to Selma, Ala., 483 miles.....	1.16½
Knoxville, Tenn., to Mobile, Ala., 520 miles.....	1.09
Knoxville, Tenn., to Jackson, Miss., 502 miles.....	1.19
Cleveland, Ohio, to Elmira, N. Y., 329 miles.....	.59
Cleveland, Ohio, to Oil City, Pa., 141 miles.....	.49
Cincinnati, Ohio, to Marietta, Ohio, 205 miles.....	.57½
New York, N. Y., to Cincinnati, Ohio, 750 miles.....	.98
Baltimore, Md., to Cincinnati, Ohio, 593 miles.....	.90

Although this evidence bears upon the question of the reasonableness of the rates, the principal controversy concerns the rate relationship, the contention being that the difference in distance does not warrant the differences in rates. Complainants urge that under ordinary distance scales the increase in the first-class rate for an additional distance of 150 miles over the first 350 miles would be but about 15 cents; and they refer to the fact that the through rates from Cincinnati or Louisville to North Carolina points are but from 60 to 70 per cent of the combinations on Virginia cities, as compared with more than 90 per cent in the case of all-rail rates from the eastern seaboard cities. The first-class rate from Cincinnati to North Carolina zone 1 points is \$1.02½ while the combination on Virginia cities is \$1.71½.

To assist in measuring the relationships of rates to North Carolina with rates not only to Virginia cities but to points farther south, the following tables are submitted:

Comparison of distances and first-class rates, all rail, from New York to Atlanta and intermediate points, by way of Potomac Yard, Richmond, and the Southern Railway.

To—	Miles.	First-class rate, all rail.
Richmond, Va.....	344	1.89.5
Danville, Va.....	484	96.5
Greensboro, N. C.....	533	120
Salisbury, N. C.....	582	129
Charlotte, N. C.....	626	129
Spartanburg, S. C.....	702	147
Greenville, S. C.....	733	147
Gainesville, Ga.....	840	157.5
Atlanta, Ga.....	893	167.5

¹ Rail or water.

Comparison of distances and first-class rates, water and rail, from New York to Atlanta and intermediate points, by way of Norfolk and the Seaboard Air Line.

To—	Miles. ¹	First-class rate, water and rail.
Norfolk, Va.	160	\$ 54. 5
Weldon, N. C.	239	105
Henderson, N. C.	291	112. 5
Raleigh, N. C.	335	112. 5
Hamlet, N. C.	431	121. 5
Chester, S. C.	529	126. 5
Greenwood, S. C.	602	150
Athens, Ga.	683	150
Atlanta, Ga.	756	150

¹ Including 160 miles, constructive, New York to Norfolk.

² Rail or water.

Considering, first, the allegation of unreasonableness in the through rates to and from the north. The nature of complainants' evidence in support of this allegation has already been indicated. It consists largely of comparisons with rates under the distance scale effective in central territory and also with individual rates between points where transportation conditions are deemed to be similar, if not less favorable. In addition, attention is directed to the many inconsistencies in the rates under attack. It is shown, for example, that while a rate of \$1.20 is charged from New York to Raleigh, a distance of 501 miles, and the same rate from Philadelphia, Pa., 409 miles, the rate from Scranton, Pa., 533 miles, is also \$1.20; and for the haul from Albany, 643 miles, and from Rochester, 661 miles, the rate is \$1.225. From Harrisburg, 400 miles, only slightly less distant than Philadelphia, the rate is \$1.125. It is argued that not all of these rates can be reasonable; that if the rate from Scranton and the rate from Harrisburg are reasonable, certainly the rate from Philadelphia must be unreasonable.

Defendants assert that the northern factor is greatly depressed by water competition; that the through rates are very low in consequence; and that the full combination on Virginia cities would be reasonable. They show that the class rates between Virginia cities and eastern North Carolina points were considered upon complaint and not found unreasonable, *Corporation Commission of Virginia v. C. & O. Ry. Co.*, 40 I. C. C., 24; and they cite numerous rates from eastern, central, and western territories to points in the south which are relatively higher than the rates attacked.

Conceding the cogency and force of many of complainants' comparisons, we do not think that the evidence warrants a conclusion that the rates between North Carolina cities and northern territory in general are unreasonable. They may be in particular instances, for manifestly inconsistencies exist; but it is not practicable upon the record to attempt an analysis of the vast number of rates making

up the northern adjustment, with a view to segregating those which rise above the limits of reasonableness. We are influenced in this conclusion by the low earnings realized from operation of the lines of these carriers during the past year and at the present time, and also by the fact that the issue in which the complainants are chiefly interested is clearly the relationship between their rates and the rates to and from Richmond and Norfolk.

Turning, then, to the allegation of undue prejudice. In various cases we have dealt with complaints arising from the relationships between North Carolina cities and the Virginia cities in rates from and to the east and west. *Danville v. Southern R.*, 8 I. C. C., 409; *Wilmington Tariff Asso. v. C. P. & V. R. Co.*, 9 I. C. C., 118; *Charlotte Shippers' Asso. v. Southern R. Co.*, 11 I. C. C., 108; *Corporation Commission, North Carolina, v. N. & W. Ry. Co.*, 19 I. C. C., 303; *Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co.*, 26 I. C. C., 146; *Massie & Pierce Lumber Co. v. N. & W. Ry. Co.*, 33 I. C. C., 14; *Corporation Commission of North Carolina v. Ry. Co.*, 33 I. C. C., 487. But in most of these cases the issue has concerned rates from and to the west and the vital conditions affecting western traffic, viz, the observance by the Chesapeake & Ohio Railway of the fourth section and the rivalry between the lines extending westward from the respective ports of Baltimore and Norfolk, do not affect traffic to and from the east. In none of them was there any definite decision on the issue now before us.

Obviously, the difference between the rates to and from North Carolina points and the rates to and from the Virginia cities is out of proportion to the difference in distance, even if all possible weight be given to the circumstance that the haul below the Virginia cities is in higher-rated territory. It follows that undue prejudice exists, unless it be the fact that the rates between the north and the Virginia cities are held at a subnormal level by conditions beyond defendants' control. That this is the fact defendants claim, stating that "the all-water routes from the east, operating regular schedules and daily service between all eastern ports and Norfolk, as well as regular service to Richmond, have fixed absolutely the measure of the rates which can be charged by the rail lines, and these all-water routes will continue to afford Richmond and Norfolk cheap rates of transportation from the east, even if the rail lines did not compete for this traffic." They further maintain that the rates from interior eastern points, including points immediately east of the Buffalo-Pittsburgh line, are influenced by the "water competitive" rates from the eastern ports. It is estimated by the general freight agent of the Atlantic Coast Line that at least 75 per cent of the traffic between the port cities and North Carolina now moves by water

and rail, the service, it is alleged, being more expeditious as well as cheaper than all rail.

Although water service was greatly reduced during the world war, and has not since increased, there was at the time of the hearing service twice a week by the Merchants & Miners Transportation Company between Boston and Norfolk and between Providence and Norfolk, daily by the Old Dominion Steamship Company between New York and Norfolk, and daily by the Baltimore Steam Packet Company and the Chesapeake Steamship Company between Baltimore and Norfolk. All but the first-named company are controlled by various railroad defendants. While an independent boat line operates to and from Boston and Providence, this competition has not forced relatively lower rates than from or to the other eastern ports. Prior to September 1, 1917, the water-and-rail rates from the eastern ports to North Carolina were lower than the all-rail rates between the same points by a 12-cent scale of differentials. In *The Fifteen Per Cent Case, supra*, decided June 27, 1917, we found that existing conditions justified the maintenance of rates via rail-and-water routes not higher than the all-rail rates between the same points. Following that decision the water-and-rail routes increased their rates to North Carolina by a scale beginning with 6 cents first class. Defendants state that "the water lines, while in urgent need of increased revenues, did not feel that, from a competitive standpoint, they could go to the all-rail basis and at the same time control any substantial proportion of the traffic in competition with the all-rail routes." Since the increases under General Order No. 28 the differentials have been on a 7.5-cent scale. The carriers maintain their rail rates from the eastern ports to Richmond and Norfolk on the same basis as the water rates.

Taking all the circumstances into consideration, including the control exercised by the railroad corporations over certain of the steamship companies and the depressed earnings of the water lines, the evidence does not indicate that defendants are now compelled to maintain their all-rail rates between the Virginia cities and eastern seaboard ports on a subnormal basis because of water competition. There is ground for the inference that the water lines feel the necessity, in order that they may secure a substantial share of the traffic, of maintaining their rates at a somewhat lower level in general than the rail rates, but there seems no basis for a belief that the latter are at present held down by the water rates. Indeed, a more reasonable conclusion is that the steamship companies would willingly follow the lead of the carriers by land if the all-rail rates were increased. This may be a situation brought about by conditions which are temporary in character, but they have persisted now for some length

of time and there is no certainty that they are temporary. What has been said of the all-rail rates to and from eastern ports applies with even greater force to the rates to and from interior points.

We are accordingly of the opinion that the rates under attack in the northern adjustment are unduly prejudicial to the North Carolina points and unduly preferential of Richmond and Norfolk. This finding is restricted to these two Virginia cities for reasons similar to those which were set forth in the consideration of the southern adjustment. The fact that beyond Richmond and Norfolk the hauls to and from the North Carolina points are in higher-rated territory than the hauls north of the Potomac River must be given consideration in determining the proper relationship. But, according due weight to that circumstance, it is our opinion that the present spreads are too great. Upon the present record we shall not undertake to disturb the existing group adjustment either in North Carolina or in the northern territory, and shall merely prescribe differentials which we think just and reasonable.

We find that the class-rate adjustment attacked is unduly prejudicial to points in zones 1 and 2 in North Carolina and unduly preferential of Norfolk and Richmond to the extent (1) that the first-class all-rail rates to and from points in zone 1 exceed by more than 30 cents per 100 pounds, and to the extent that the first-class all-rail rates to and from points in zone 2 exceed by more than 35 cents per 100 pounds, the contemporaneous first-class all-rail rates between the same eastern points and Norfolk or Richmond; (2) to the extent that the first-class water-and-rail rates to and from points in zones 1 and 2 exceed by more than the same respective differentials the contemporaneous first-class water rates to and from Norfolk or Richmond; (3) to the extent that the first-class rail-water-and-rail rates to or from points in zones 1 and 2 exceed the contemporaneous first-class rail-and-water rates to and from Norfolk and Richmond by more than the same respective differentials; and (4) to the extent that the rates on classes, other than first, to and from points in zones 1 and 2, exceed rates made the same percentages of the first-class rates which may be established as a consequence of our conclusions and order herein, as the present rates on such other classes are of the present first-class rates.

The record is not sufficient to enable us to determine proper differentials between commodity rates. We shall, however, expect the carriers to revise their commodity-rate adjustment promptly, using as a guide the class-rate relationships prescribed herein.

An appropriate order will be entered.

57 I. C. C.

APPENDIX.

Description of North Carolina zones 1, 2, 3, and 4.

ZONE NO. 1.

This zone embraces all points on the main line of the Southern Railway from Winston-Salem to Goldsboro, inclusive, and from points on the Southern Railway from Greensboro to Ellsboro, inclusive. All points on the Seaboard Air Line Railway from Littleton to Cary, inclusive, and from Henderson to Durham, including Oxford; also its branch line to Louisburg. All points on the Atlantic Coast Line Railroad from Ruggles to Goldsboro, inclusive, and from Contentnea to Smithfield, inclusive; on its branch line from Halifax to Kinston, inclusive, and on its branch line from Rocky Mount to Spring Hope, inclusive. Also from Rocky Mount to Hobgood, inclusive, except Tarboro. On the Williamston branch from Mildred to Everetts, inclusive. On the Washington branch from Parmele to Grimes, inclusive. Points on the East Carolina Railway between Henrietta and Farmville, inclusive. Points on the Norfolk Southern Railroad from Grimesland to Raleigh, inclusive. All points on the Norfolk Southern Railroad, Goldsboro to New Bern, and points between New Bern and Washington, exclusive of New Bern and Washington.

ZONE NO. 2.

This zone includes all territory on the Southern Railway main line from Lexington to Charlotte, including all points between Salisbury and Statesville, all points on the Mooresville branch between Winston-Salem and Charlotte, exclusive of Winston-Salem. On its branch line from High Point to Ashboro, not including High Point; all points on the Greensboro-Sanford branch; all points Climax to Ramseur, and Salisbury to Norwood. All points on the Winston-Salem Southbound between Winston-Salem and Wadesboro, not including Winston-Salem; all points on the Seaboard Air Line from Apex to Charlotte via Hamlet and Monroe, inclusive; its branch line from Moncure to Pittsboro. All points on the Randolph and Cumberland from Cameron to Carthage. All points on the Atlantic Coast Line from Goldsboro to Wrightsboro, not including Goldsboro; on its branch line Warsaw to Clinton; on its main line from Four Oaks to Fayetteville, inclusive; on its line from Fayetteville to Sanford. All points on the Raleigh, Charlotte, and Southern from Ashboro to Aberdeen, including Mount Gilead branch and its line from Colon to Star.

ZONE NO. 3.

This zone is composed of all points on the Seaboard Air Line between Wilmington and Hamlet, not including Wilmington and Hamlet; all points on the Atlantic Coast Line between Wilmington and Fayetteville, exclusive of Wilmington and Fayetteville; all points on the Atlantic Coast Line between Hope Mills and Pembroke, inclusive, and from Parkton to Maxton; all points on the Virginia and Carolina Southern north of Lumberton, and all points on the Aberdeen and Rockfish Railroad.

ZONE NO. 4.

This zone embraces all points on the Atlantic Coast Line from Wilmington to Fair Bluff, exclusive of Wilmington, and all other points between the Seaboard Air Line from Wilmington to Monroe and the South Carolina line.

HIGHLAND IRON & STEEL COMPANY
v.
DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
CHICAGO TERMINAL RAILROAD COMPANY, ET AL.

Submitted February 28, 1920. Decided May 3, 1920.

Rates legally applicable on scrap iron, in carloads, from Burr Oak and Chicago, Ill., to Terre Haute, Ind., found not unreasonable or otherwise unlawful.
Complaint dismissed.

R. B. Coapstick for complainant.

T. O. Jennings and *K. L. Richmond* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, which, with such modifications as have appeared necessary from our examination of the record, has been followed in this report.

Complainant is a corporation engaged in the manufacture of iron and steel articles at Terre Haute, Ind. By complaint filed August 11, 1919, it alleges that the rates charged on various carloads of scrap iron shipped from Chicago, Ill., and Burr Oak, within the Chicago switching district, to Terre Haute between June 11, 1918, and April 11, 1919, were illegal, unreasonable, and unjustly discriminatory. Reparation is sought. Except as otherwise noted rates will be stated in amounts per long ton.

The shipments originated at Chicago on the Baltimore & Ohio Chicago Terminal Railroad and at Burr Oak on the Chicago, Rock Island & Pacific Railway. The switching receipts issued by the originating carriers contained instructions to switch the shipments to the Chicago & Eastern Illinois Railroad, and, accordingly, they were delivered to that line at Dolton and Oakdale, also within the Chicago switching district, and moved by it to Terre Haute. A rate of \$1.50 was charged on all of the shipments except one from Chicago,

which moved prior to June 25, 1918, and was charged a rate of \$1.20. These rates were published in Chicago & Eastern Illinois tariffs I. C. C. Nos. 2933 and 3047.

Complainant shows that prior to June 25, 1918, a rate of \$1.05 on scrap iron, in carloads, increased on that date under General Order No. 28 of the Director General of Railroads to \$1.30, was published by agent Boyd from Chicago and Burr Oak to Terre Haute. An examination of the tariffs shows that, by reason of certain restrictions contained in the tariff references, these rates never applied in connection with shipments originating at Burr Oak on the Chicago, Rock Island & Pacific. The rates published by agent Boyd in connection with shipments originating at Chicago on the Baltimore & Ohio Chicago Terminal were not subject to these restrictions.

The rates on scrap iron, in carloads, from Chicago to Terre Haute via the Baltimore & Ohio Chicago Terminal and Chicago & Eastern Illinois were originally published in individual tariffs of the Chicago & Eastern Illinois and they have been continuously so published, each succeeding individual tariff of that carrier, including I. C. C. Nos. 2933 and 3047, canceling the previous one. Agent Boyd's tariffs publishing the lower rates above quoted did not cancel or in any way refer to the rates published in the individual tariffs of the Chicago & Eastern Illinois.

Where conflicting rates are named in separate tariffs the rate first established is the legal rate, upon the principle that lawfully established rates remain in effect until specifically canceled. *Conference Rulings* 50, 70, and 104; *New Albany Box & Basket Co. v. I. C. R. R. Co.*, 16 I. C. C., 315; *Sun Co. v. T. & O. C. Ry. Co.*, 52 I. C. C., 12; *Dewey Portland Cement Co. v. A., T. & S. F. Ry. Co.*, 56 I. C. C., 444. It follows that the legal rates on the shipments from Chicago were those published in the Chicago & Eastern Illinois tariffs cited, i. e., the same rates that applied from Burr Oak. Defendants should promptly eliminate from the tariffs the conflict pointed out.

The distance over the Chicago & Eastern Illinois from Chicago to Terre Haute is 178 miles, and in support of their contention that the rates charged were not unreasonable, defendants cite rates on scrap iron, in carloads, of \$1.90 from Chicago to Rock Island, Ill., Indianapolis and Fort Wayne, Ind., distances of 181, 183, and 148 miles, respectively; \$2.80 from Chicago to Richmond, Ind., 222 miles; and \$1.90 from St. Louis, Mo., to Terre Haute, 168 miles. They state that Terre Haute usually takes the same rates from Chicago as Indianapolis, which, they contend, indicates that the rates charged were subnormal.

While some question was raised by complainant as to whether the shipments were misrouted, no direct evidence of misrouting was submitted and the record affords no basis for a finding of misrouting.

We find that the rates charged were legally applicable and not unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

No. 10992.

HIGHLAND IRON & STEEL COMPANY

v.

EVANSVILLE & INDIANAPOLIS RAILROAD COMPANY
ET AL.

Submitted March 8, 1920. Decided May 3, 1920.

Six carloads of mill cinder from Terre Haute, Ind., to Rockwood, Tenn., found to have been misrouted. Reparation awarded.

R. B. Coapstick for complainant.

K. L. Richmond for all defendants except Evansville & Indianapolis Railroad Company and William P. Kappes, its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties. No exceptions thereto were filed.

Complainant is a corporation engaged in the manufacture of iron and steel articles at Terre Haute, Ind. By complaint seasonably filed, as amended, it alleges that six carloads of mill cinder which moved in November and December, 1917, from Terre Haute to Rockwood, Tenn., were misrouted by defendants, resulting in the exaction of unreasonable charges. Reparation is asked. Rates will be stated in amounts per long ton.

The shipments, aggregating 497,000 pounds, moved from Terre Haute over the Evansville & Indianapolis Railroad to Evansville, Ind., where that carrier delivered three each to the Illinois Central Railroad and the Louisville & Nashville Railroad, with instructions to transport them to destination. They moved from Evansville to Rockwood over the lines of these carriers in connection with

the Tennessee Central Railroad from Hopkinsville, Ky., or Clarksville, Tenn. Transportation charges were collected in the sum of \$1,411.39, at the rate of \$6.36 legally applicable via the routes of movement.

Complainant's witness testified that the agent of the Evansville & Indianapolis quoted a through rate of \$2.40, but did not specify the route over which it was applicable. This rate was inserted in the bills of lading issued by the originating carrier, which contained no routing instructions.

When the shipments moved the rate of \$2.40 was applicable from Terre Haute to Rockwood by way of the Evansville & Indianapolis to Evansville and the Southern Railway and Cincinnati, New Orleans & Texas Pacific Railroad beyond. If the shipments had moved over this route the transportation charges would have been \$532.50.

We find that the Evansville & Indianapolis Railroad Company misrouted the shipments; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges paid and those which would have accrued if the shipments had moved by the route over which the rate of \$2.40 applied; and that it is entitled to reparation from the Evansville & Indianapolis Railroad Company in the sum of \$878.89, with interest.

An appropriate order will be entered.

No. 10863.
CHARLESTON ORE COMPANY
v.
SEABOARD AIR LINE RAILWAY COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted March 17, 1920. Decided May 3, 1920.

Rate on pyrites cinders, in carloads, from Wilmington, N. C., to Charleston, S. C., found unreasonable. Reasonable maximum rate prescribed and reparation awarded.

Courtlandt Nicoll for complainant.

Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation, operates a plant at Charleston, S. C., for the desulphurizing and nodulizing of pyrites cinders, a residue of pyrites ore. By complaint filed September 3, 1919, as amended, it seeks reparation, alleging that the rate of 22 cents per 100 pounds charged by defendants for the transportation of nine carloads of pyrites cinders from Wilmington, N. C., to Charleston, between September 17 and 25, 1917, inclusive, was unreasonable to the extent that it exceeded 80 cents per long ton. Unless otherwise indicated, rates throughout this report are stated in amounts per long ton and are those in effect prior to June 25, 1918, on which date they were increased under General Order No. 28 of the Director General of Railroads.

The shipments, aggregating 488,000 pounds, moved over the Seaboard Air Line Railway in connection with the Raleigh & Charleston Railroad, through Lumberton, N. C., and Smithboro, S. C., 218 miles. Charges in the sum of \$1,082.18 were collected at the sixth-class rate of 22 cents per 100 pounds, minimum 50,000 pounds, governed by the southern classification. One shipment was undercharged \$13.20, due to an erroneous calculation, and another was undercharged \$19.14, due to the fact that the charges were based on 41,300 pounds, the actual weight, instead of the minimum of 50,000 pounds.

57 I. C. C.

Prior to September 16, 1910, the Seaboard Air Line published, in connection with the Raleigh & Charleston, a carload rate of \$1.60, minimum 40,000 pounds, on pyrites cinders from and to the points in question. On that date a commodity rate of 80 cents, minimum 60,000 pounds, was established. This rate was canceled on August 10, 1917, leaving in effect the sixth-class rate of 22 cents per 100 pounds, equivalent to \$4.93 per long ton. The sixth-class rate contemporaneously in effect in the opposite direction was 16 cents per 100 pounds.

At the time of movement the Atlantic Coast Line Railroad maintained a rate of 80 cents, minimum 60,000 pounds, from Wilmington to Charleston, the distance over this route being 211 miles. The present rates via that route are \$1, minimum 60,000 pounds, and \$2, minimum 40,000 pounds. Complainant testified that the shipments in issue were routed via the Seaboard Air Line at that carrier's solicitation and with the understanding that the 80-cent rate was applicable. The record shows that a further reason for that routing was the inability of the Atlantic Coast Line to furnish the necessary equipment.

The rate assailed represents an increase subsequent to January 1, 1910, and the burden of justifying it, therefore, rests upon the defendants. They did not attempt to justify the class rate charged, but contend that the 80-cent rate was unremunerative and that \$1.65 would have been a reasonable rate. In support of these contentions they cite numerous rates which applied on this and other traffic in the same general territory. The earnings under the rates charged and sought and under the rate which defendants claim would have been reasonable are contrasted below with the earnings under the comparative rates on pyrites cinders which are cited:

From—	To—	Miles.	Rate.	Earnings.	
				Long ton-mile.	Car-mile.
				<i>Mills.</i>	<i>Cents.</i>
Wilmington.....	Charleston.....	211	\$4.93	22.6	¹ 50.4
			.80	3.7	² 9.7
			1.65	7.6	³ 13.5
					³ 20.0
Anderson, S. C.....	do.....	240	1.65	6.9	³ 12.3
Blackburn, S. C.....	do.....	246	1.65	6.7	³ 12.0
Greenville, S. C.....	do.....	274	1.65	6.0	³ 10.7
Columbus, Ga.....	Copperhill, Tenn.....	233	2.24	9.6	³ 21.4
Do.....	Ducktown, Tenn.....	238	2.24	9.4	³ 21.0

¹ Based on minimum weight of 50,000 pounds.

² Based on minimum weight of 60,000 pounds.

³ Based on minimum weight of 40,000 pounds.

The rates cited on commodities other than pyrites cinders follow: On imported pyrites from Wilmington to various North Carolina points, rates ranging from \$1.96, minimum 40,000 pounds, for 143 miles, to \$2.52, minimum 40,000 pounds, for 224 miles; on pyrites fines, \$2.24, minimum 40,000 pounds, from Durham, N. C., to Norfolk, Va., 172 miles; and from Wilmington to Charleston, \$1.62, minimum 60,000 pounds, on ground limestone; \$2.24, minimum 20,000 pounds, on fertilizer and fertilizer material; \$2.24, minimum 40,000 pounds, on common brick; \$2.24, minimum 24,000 pounds, on cement and barrel material; \$2.46, minimum 24,000 pounds, on ice; \$2.69, minimum 30,000 pounds on iron pipe; \$2.91, minimum 30,000 pounds, on cotton seed and cottonseed hulls; and \$3.25, minimum 25,000 pounds, on earthen or concrete sewer pipe. These commodities have a substantial commercial value, while complainant purchased the pyrites cinders at \$1 per long ton. Moreover, the minima applicable in connection with these comparative rates range from 25,000 to 40,000 pounds, except on limestone, whereas a minimum of 60,000 pounds applies under the rate sought and formerly in effect. The shipments in issue weighed from 40,000 to 70,000 pounds, the average being approximately 55,000 pounds.

In his proposed report the examiner who heard the evidence in this case recommended that we should find the rate assailed unreasonable to the extent that it exceeded \$1.65 per long ton, minimum 40,000 pounds. We are of the opinion, however, that the defendants have failed to justify that basis. Complainant is apparently satisfied with the 60,000-pound minimum which applied under the 80-cent rate formerly in effect over the route of movement as well as via the Atlantic Coast Line, and no reason appears for the use of a lower minimum in determining the reasonableness of the charges in issue. As above shown, the rate proposed by the defendants would have produced 13.5 cents per car-mile, based on a minimum of 40,000 pounds; a rate of \$1.20, based on a minimum of 60,000 pounds, would have yielded 14.5 cents per car-mile.

Upon all the facts of record we are of the opinion and find that the rate charged was unreasonable to the extent that it exceeded \$1.20 per long ton, minimum 60,000 pounds, and that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed \$1.50 per long ton, minimum 60,000 pounds. From the present record it is impossible to determine the exact amount of reparation due. The complainant should, therefore, comply with rule V of the Rules of Practice.

An appropriate order will be entered.

57 I. C. C.

No. 5899.

MOBILE CHAMBER OF COMMERCE ET AL.

v.

MOBILE & OHIO RAILROAD COMPANY ET AL.

Submitted March 3, 1920. Decided May 11, 1920.

Adjustment of rates on cotton from various points in Alabama and Georgia to Mobile, Ala., and Savannah, Ga., respectively, for export, found unduly prejudicial to Mobile and unduly preferential of Savannah. Reasonable relationships prescribed. Original report in 32 I. C. C., 272.

Luther M. Walter and John S. Burchmore for complainants.

Merrel P. Callaway and R. Walton Moore for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

EASTMAN, *Commissioner*:

This report is based upon a proposed report prepared by the examiner and submitted to the parties, with such modifications as seemed necessary after consideration of the record and of the exceptions which were filed.

In the original report in this case, 32 I. C. C., 272, decided November 30, 1914, we found, among other things, that the export rates on cotton from points on defendants' lines in the southeast to Mobile, Ala., were unduly prejudicial to that port as compared with similar rates to Savannah, Ga. We entered no order at that time, but stated that the defendants would be required to readjust the rates, eliminating the unlawful discrimination found to exist. Upon failure of the defendants to comply with the views expressed in our report we entered an order on July 23, 1915, reading in part as follows:

It is further ordered, That the defendants whose lines serve points of origin stated in said territory be, and they are hereby, notified and required to cease and desist, on or before October 1, 1915, and thereafter to abstain, from charging, demanding, collecting, or receiving higher rates for the transportation of cotton for export from said points of origin when destined to the port of Mobile, Ala., than the rates contemporaneously charged for similar distances for the transportation of export cotton from said points of origin when destined to the port of Savannah, Ga.

The Southern Railway had begun a revision of its rates prior to the issuance of this order and the other defendants made changes subsequently. The resulting adjustments from certain portions of defendants' lines in Alabama and Georgia were attacked by complainants as not complying with the above-quoted section of the

order, and on January 10, 1916, the case was reopened for further investigation in the light of this criticism.

The issue now presented is whether the rates on cotton from the points located on the following portions of defendants' lines to Mobile, for export, are unduly prejudicial to Mobile as compared with the rates from the same points of origin to Savannah:

On the Southern Railway, from Birmingham to Anniston, Ala., and from Anniston to Calera, Ala.

On the Central of Georgia Railway, hereinafter called the Central, from Birmingham, Ala., to Columbus, Ga., including the branch from Opelika to Roanoke, Ala.; from Columbus southwestwardly through Union Springs and Troy to Andalusia, Ala.; from Montgomery eastwardly through Union Springs to Cuthbert, Ga., including the Fort Gaines branch and the Eufaula-Ozark branch; and from Lockhart, Ala., to Walker, Ga.

On the Seaboard Air Line Railway, hereinafter called the Seaboard, from Montgomery, Ala., to Cottonton, Ala., on the Savannah division, and from Birmingham, Ala., to Cedartown, Ga., on the Birmingham division.

On the Atlantic Coast Line Railroad, hereinafter called the Coast Line, points between and including Montgomery, Ala., and Bainbridge, Ga.

On the Western Railway of Alabama, from West Point, Ga., to Montgomery, Ala.

On the Atlanta & West Point Railroad, from La Grange, Ga., to West Point, Ga.

On the Atlanta, Birmingham & Atlantic Railroad, hereinafter called the Birmingham, from Birmingham to La Grange, Ga.

On June 25, 1918, under General Order No. 28 of the Director General of Railroads, all rates on cotton to Mobile and Savannah, as well as to other ports, were increased. The increases in the rates with which we are here concerned were generally 15 cents per 100 pounds, but in some instances the amount was slightly above or below this figure. Rates are stated herein in cents per 100 pounds, are those now in effect, and apply on uncompressed cotton, any quantity, for export, to be compressed in transit by and at the expense of the carrier.

In nearly every instance the rates to Mobile are relatively higher than the rates to Savannah from the same points of origin. Complainants say that, broadly speaking, their desire is to secure equal rates with Savannah and other south Atlantic ports from cotton-producing sections that are equidistant or substantially equidistant from the south Atlantic ports and Mobile, and proportionately lower rates than Savannah from fields that are

nearer Mobile. It is not their purpose, they say, to force reductions in the rates to Mobile. They aver that the conditions affecting rates to Mobile are shown by the evidence to be substantially similar to the conditions affecting rates to Savannah, and that distance is the paramount factor to be considered in determining the relative adjustment.

To carry to its logical conclusion complainants' contention that distance should control would mean the adoption of a distance scale throughout the cotton territory. To this defendants strongly object, fearing that the result would be the extension of the Georgia intrastate scale not only to Mobile, but to all ports; that it would limit each port to a supply of cotton from the producing territory immediately tributary and thus stifle port competition; that it would restrict competition between cotton buyers and prevent growers and local dealers from securing the highest market price; that it would seriously affect the revenues of the carriers; and that it would in general revolutionize and demoralize existing transportation and commercial conditions under which cotton is bought, sold, and handled.

The Railroad Commission of Georgia constructed the Georgia mileage scale on cotton by taking as a basis for a distance of 300 miles the then existing rate of 45 cents from Atlanta to Savannah, which are 292 miles apart by the short-line route, deducting for lesser distances down to 100 miles 1 cent for each 10-mile group and adding the same amount for each 10-mile group over 300 miles. For distances under 100 miles the reductions are proportionately greater. Joint rates for joint-line hauls are made by combination of the respective single-line rates, less 10 per cent. Defendants claim that this scale is abnormally low because the rate on which it was based was compelled by the competition of rival south Atlantic ports and the lines which serve them. They also observe that the rates to Mobile from the points of origin here under consideration are in most instances, if not all, lower than the Georgia joint-line basis. But the rates from these points of origin to Savannah are also generally lower than the Georgia scale for either joint-line or single-line application, as the case may be, the reason apparently being carrier, cross-country, or port competition. There is nothing in the record upon which to base a definite judgment as to the reasonableness of the respective rates under the Georgia scale or of its gradations; but this is not important, as the question now before us is one of relationship rather than of the absolute measure of the rates.

Defendants assert, and it seems to be true so far as the south Atlantic ports are concerned, that the existing rate system is based

on the theory of according each port and the lines serving it a fair opportunity to compete for the traffic. In the original report, at page 275, we said:

The export cotton rate adjustment is said to be the result of many years of tariff construction, based on experience. The rate from a given point to each port is made with relation to the rate to some other port, so that a reduction in the rate to any one port entails a readjustment of the rates to all other ports and a consequent reconstruction of this whole rate adjustment. The domestic rates bear their relation to the export rates, and would themselves be thrown out of line by any such reduction.

In support of this theory of rate construction defendants cite the following statement in *Andy's Ridge Coal Co. v. Southern Ry. Co.* 18 I. C. C., 405, 410:

An attempt, therefore, to apply a strictly mileage scale to relative rates from different mines would practically eliminate all competition.

In determining these differentials we must consider the interest of the consumer as well as the producer. Rates should be so adjusted as to permit the widest possible competition. The user of steam coal at Atlanta should be given the privilege of buying both at Coal Creek and Apalachia, and Dante, if that can fairly be done.

In effect, however, they limit such doctrine to south Atlantic ports and contend that rates to Mobile relatively higher than to Savannah are justified by differences in conditions.

One point most strongly urged as justifying such higher rates to Mobile is that the hauls to Savannah are generally over one line or forced by one-line competition, while, with the exception of the Southern Railway, the Savannah lines do not reach Mobile, and consequently the hauls to that point from the territory in question are generally over two or more lines. Defendants urge that a differential of 8 cents is not unreasonable for this difference in transportation conditions, that being the amount prescribed by us in several cases as the first-class differential for joint-line hauls over single-line hauls in the southwest and southeast. But cotton generally moves under special commodity rates much lower than the first-class rates. None of the rates in issue is a class rate. The bulk of the traffic here under consideration is in carload quantities, whereas most of the traffic under first-class rates is in less than carloads. Furthermore, the differential of 8 cents was in each instance prescribed in connection with differential stations and, with consequent short hauls, the special factors which are 60 cents to Mobile with this argument, while no prior competition, which is 70 cents to Savannah, is covered in *Rates from V*. evidence was submitted by *the* difference in cost of transportation for joint-line as compared with single-line hauls over the routes in question. Complainants contend that there is no justification for making rates for joint-line hauls substantially higher, since the transfers which are alleged to increase the cost

often occur in one-line hauls as well; but they apparently have no serious objection to a differential of 1 cent or 2 cents. In general the rates to Savannah from the territory of origin in issue are not made relatively higher for joint-line than for single-line hauls, apparently because of the competition of single-line routes to the nearest south Atlantic port from the same point of origin, other junction point, or cross-country competitive point.

The defendants aver that, owing to lower traffic density with consequent higher cost of operation, the earnings of the lines in Alabama are relatively not as great as the earnings of the lines in Georgia. They state that about six years ago the Alabama Railroad Commission, upon such a showing, authorized an increase of 10 per cent in the Alabama cotton rates, which had been on the Georgia scale. Increases were also granted on numerous other commodities. Complainants assert that this action was temporary and intended merely as relief from the burden of then existing abnormal commercial conditions. According to the record the increases were originally granted only until December 31, 1915, when an extension was granted to the Central, Seaboard, Birmingham, and possibly other lines, but not to the Southern and the Louisville & Nashville. Defendants do not explain why an extension was not granted to the two latter roads. The showing with respect to the reasons for the increases is too indefinite to justify a conclusion therefrom that the conditions of transportation in Alabama are substantially different from those in Georgia. No evidence as to comparative earnings, density of tonnage, or cost of operation in the two states was submitted. The movements in question to Mobile are not wholly within Alabama and few of the movements to Savannah are wholly within Georgia. Relative traffic densities, so far as cotton is concerned, might well be affected by the adjustment of rates here under attack.

Certain of the defendants having lines extending east and west and reaching Savannah with their own rails claim that their lines were constructed primarily to serve Savannah; that they have made large investments in terminals at that port; and that they can not justly be required to ^{compete} in rates to Mobile which will divert the traffic to that port ^{to the detriment of their own business} which to base a definite judgment without appeal, has been definitely answered is not important. *Walsenburg Coal Field*, 26 I. C. C., 85, 88, and other cases. So also the plea that diversion of traffic to Mobile will result in the sacrifice of equipment to other lines must fall before the superior rights of the public to an equitable adjustment of rates.

Because of the peculiar conditions surrounding this traffic an adjustment of rates based wholly on distance does not seem warranted. Due consideration must be given to carrier competition, cross-country competition, and the desirability of making rates which will accord producers and shippers reasonable access to all the markets. Where the traffic moves to Mobile over two or more lines as against a one-line haul to Savannah, or vice versa, it is not unreasonable to recognize that fact also to some extent in the rates. But it does not appear that distance has been given sufficient consideration in the present adjustment from the territory in question or that Mobile has been placed on the fair competitive basis to which it is entitled under all the circumstances and conditions. So many different factors enter in that it is impracticable to prescribe a general relationship of rates, and for this reason the adjustment on each line will be considered separately.

SOUTHERN RAILWAY.

The Southern Railway is the only defendant whose lines reach both Mobile and Savannah. It also has a one-line route to Brunswick, Ga. The following table shows the rates and distances from representative Alabama points:

From—	To Mobile.		To Savannah.		To Brunswick.	
	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.
	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
Birmingham.....	60	271	65	461 1 448 1 453 1 444	65	445 1 453
Anniston.....	60	296	65	397	65	379
Talladega.....	60	272	65	421 1 383	65	408 1 378
Childersburg.....	60	252	65	441 1 405	65	423
Wilsonville.....	60	244	70	449	70	431
Columbiana.....	60	236	70	457	70	439
Calera.....	60	225	70	468	70	460

¹ Via Central.

² Via the Birmingham.

³ Via the Birmingham, Cordale, and Seaboard.

⁴ Via Seaboard and connections.

From all points, Birmingham to Anniston and Anniston to Childersburg, inclusive, the rates are 60 cents to Mobile and 65 cents to Savannah and Brunswick; from stations between Childersburg and Calera, 60 cents to Mobile and 70 cents to Savannah and Brunswick. These rates are based upon a comprehensive readjustment initiated by the Southern following the original hearing in this case. For the most part, the rates to Mobile were substantially reduced and the rates to Savannah and Brunswick substantially increased.

In place of the present differentials shown in the above table, ranging from 5 cents at Birmingham to 10 cents at Calera, complainants seek differentials ranging from 7 or 9 cents at Anniston to 15 or 18 cents at Calera, with 10 cents at Birmingham. Judged by the respective distances to the two ports, there is much to be said in favor of these larger differentials. From Birmingham to Savannah, however, the Southern meets the competition of the one-line route of the Central and of the joint-line routes of the Birmingham and of the Seaboard. None of these other carriers participates in the traffic from Birmingham to Mobile. It is evident, therefore, that the Southern does not control the rate to Savannah, and that an increase in the differential at Birmingham accomplished by an increase of the Southern's rate to Savannah would be of no benefit to Mobile. In the original report none of the rates in issue was found unreasonable, and the rehearing was confined to the question of relationship. For this reason we could not require a reduction in the Southern's rate to Mobile; nor could we in this proceeding prescribe minimum rates to Savannah or Brunswick.

The record indicates that these other carriers for years insisted as a matter of competitive necessity upon meeting from Birmingham to south Atlantic ports the rates made by rival lines from Birmingham to the Gulf, maintaining at the same time higher rates from intermediate points, and that only since they have been required to readjust their rates in accordance with the amended fourth section have they published a higher rate from Birmingham to Savannah than is published to the Gulf, observing the Birmingham rate as maximum from intermediate points. The Southern Railway must likewise observe its Birmingham rate as maximum from intermediate points, including Anniston. Childersburg and Talladega are intermediate to Birmingham on traffic to Savannah, the first by way of the Central, and the second by way of the Birmingham, and this results in the application by the Southern of the Birmingham rate from these points as well as from points between Childersburg and Anniston. At points west of Childersburg, which are all local to the Southern on traffic to Savannah, the rates to that port are made 2 cents and 5 cents, according to the increase in distance, over the rates from Childersburg.

Upon the facts of record we find that the adjustment described is not unduly prejudicial to Mobile or unduly preferential of Savannah.

CENTRAL OF GEORGIA RAILWAY.

This carrier reaches Savannah over its own rails, while traffic to Mobile is turned over to the Louisville & Nashville.

(a) *Birmingham to Columbus.*—The following are rates and distances from typical points, all being in Alabama except Columbus, which is in Georgia:

From—	To Mobile.		To Savannah.	
	Rate.	Distance.	Rate.	Distance.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Birmingham.....	(1)	* 271	65	* 448
Childersburg.....	65	* 388	65	* 405
Sylacauga.....	65	* 262	65	* 384
Opelika.....	60	* 378	65	* 395
Columbus.....	62	* 262	60	* 374
		* 303		* 320
		* 245		* 299
		* 274	57	* 291
				* 263

¹ Central does not participate in traffic from Birmingham to Mobile. Rate via other lines, 60 cents.

² Via Southern.

³ Via Central.

⁴ Via Central, Columbus, Montgomery, and Louisville & Nashville.

⁵ Short line, via Central, Americus, and Seaboard.

⁶ Short line, via Central, Childersburg, and Southern. Via Louisville & Nashville all the way, 274 miles.

⁷ Short line, via Western Railway of Alabama and connections.

⁸ Short line, via Seaboard.

From points southeast of Birmingham to and including Sylacauga the Central observes the Birmingham rate of 65 cents as maximum to Savannah and applies the same rate to Mobile. Via other lines the rate from both Childersburg and Sylacauga to Mobile is 60 cents. From points between Sylacauga and Opelika the rates are 65 cents to Mobile and 62 cents to Savannah. From Opelika to Mobile the Central meets the Western Railway of Alabama's short-line rate of 60 cents and has the same rate to Savannah. From points between Opelika and Columbus, not inclusive, the rates are 65 cents to Mobile and 60 cents to Savannah. Prior to June 25, 1918, the rate from Columbus to Mobile was the same as the Opelika rate; it is now 62 cents, or 2 cents over the present Opelika rate and 5 cents over the present Columbus-Savannah rate. Until the construction by the Seaboard of its shorter route from Columbus to Savannah the Central maintained the same rate, 45 cents, to both ports. Traffic from Opelika to Mobile routed via the Central passes through Columbus, but the maintenance of higher rates at points between Opelika and Columbus and at the latter point than at Opelika has been authorized.

The distances from Childersburg, Sylacauga, and Opelika to Mobile by way of the Central, Columbus, and Montgomery are each less than 20 miles shorter than the distance from the same point to Savannah by way of the Central or than the short-line distance to Brunswick, and the rates to the three ports are the same. There

are shorter routes from those points of origin to Mobile by way of the Southern from Childersburg, the Louisville & Nashville from Sylacauga, and by way of the Western Railway of Alabama and connections from Opelika, and the rates are lower from both Childersburg and Sylacauga via these other routes; but we can not compel the Central to meet the competition of these shorter lines. From points local to the Central between Childersburg and Columbus it could, in many instances, provide a shorter route for the traffic by turning it over to the Western Railway of Alabama at Opelika or to the Southern at Childersburg; but these routes would seriously short haul the Central and there is no sufficient evidence in this record to justify a finding that its route by way of Columbus and Montgomery is unreasonably circuitous.

Complainants ask for differentials in favor of Mobile of 10 cents at Birmingham, 9 cents at Childersburg, 8 cents at Sylacauga, 6 cents at stations between Sylacauga and Opelika, 5 cents at Opelika and at stations between Opelika and Columbus, and for properly graded rates at intermediate points not named. From Columbus they ask for a parity of rates to both ports.

We find that the relationship of rates from points between Birmingham and Sylacauga, including the latter, and from Opelika is not unduly prejudicial to Mobile; that the rate adjustment from points between Sylacauga and Opelika and between Opelika and Columbus is unduly prejudicial to Mobile to the extent that the rates to Mobile exceed the rates to Savannah; and that the rate adjustment from Columbus is unduly prejudicial to Mobile to the extent that the rate to Mobile exceeds the rate to Savannah by more than 2 cents.

(b) *Opelika-Roanoke branch*.—From all points on the Opelika-Roanoke branch, except Opelika, the main-line junction, the rates are 65 cents to Mobile and 62 cents to Savannah. In each instance the distance favors Mobile by 17 miles, as it does from all points on the line between Birmingham and Columbus. Roanoke is also on the main line of the Birmingham, the distance to Savannah over that line and its connections being 316 miles, as against 359 by way of the Central. No reason appears why the relative adjustment on this branch should differ from that at Opelika, and we accordingly find that it is unduly prejudicial to Mobile to the extent that the rates to Mobile exceed the rates to Savannah.

(c) *From Columbus southwestwardly through Union Springs and Troy to Andalusia*.—The following are the rates and distances from representative points, all being in Alabama except Columbus:

From—	To Mobile. ¹		To Savannah. ²		To Brunswick.	
	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.
	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
Columbus.....	62	274	57	291		
Girard.....	62	272	62	298		
Fort Mitchell.....	62	264	62	301		
Seale.....	62	255	62	310		
Hurtsboro.....	62	{ 240 } 235	62	{ 326 } 281	62	275
Union Springs.....	62	220	62	{ 346 } 307		
Troy.....	62	{ 250 } 231	62	{ 376 } 358	62	319
Andalusia.....	62	303	62	{ 429 } 395		

¹ Via Central, Montgomery, and Louisville & Nashville, unless otherwise shown.

² Via Central all the way, unless otherwise shown.

³ Via Seaboard.

⁴ Via Seaboard and connections.

⁵ Short line, via Central, Americus, and Seaboard.

⁶ Via Coast Line.

⁷ Via Coast Line, Montgomery, and Louisville & Nashville.

The distance from Andalusia to Mobile via the Louisville & Nashville is 153 miles as against 303 miles by way of the Central, Union Springs, Montgomery, and the Louisville & Nashville. From Troy the distance by way of Andalusia is 44 miles less than by way of Montgomery, but from Union Springs the Montgomery route is the shorter by 16 miles. Complainants contend that whether or not defendants see fit to forward shipments via the shorter route the rates properly should be measured thereby. On behalf of defendants it was stated that the tracks of the Central and the Louisville & Nashville were connected at Andalusia by the tracks of the Andalusia Manufacturing Company, a lumber concern, and that the interchange over the tracks of the lumber company was confined to carload traffic originating at stations on the Central between Union Springs and Andalusia and at stations on the Louisville & Nashville between Georgianna, Ala., and Graceville, Fla. Whether the situation is the same to-day, we do not know. It was further stated that cotton does not move in carload quantities from local stations between Union Springs and Andalusia. As there is no compress at Andalusia, cotton handled via that junction would have to be concentrated and compressed at Troy or sent through flat. On less-than-carload shipments of flat cotton the shipper would have to pay a published tariff charge of 2 cents per 100 pounds, minimum 25 cents, for transfer at Andalusia, the Louisville & Nashville's rate of 46 cents on flat cotton from Andalusia to Mobile, and a charge of 15 cents per 100 pounds for compressing at the port, as all export cotton must be in compressed bales. Under all the circumstances we find that the route via Montgomery is not unduly circuitous and that the distances via that route may properly be considered in determining the equitable rate adjustment.

From points between Columbus and Union Springs the difference between the distances to Mobile and Savannah varies, increasing with the distance from Columbus. From the points shown in the above table the differences in favor of Mobile are approximately as follows: Fort Mitchell, 37 miles; Seale, 55 miles; Hurtsboro, 86 miles; and Union Springs, 126 miles. From stations Union Springs to Andalusia, inclusive, the difference is constant, 126 miles. But using the workable short-line distances to Mobile, Savannah, and Brunswick, the differences in favor of Mobile are reduced to 40 miles at Hurtsboro, 88 miles at Troy, and 92 miles at Andalusia.

Complainants ask for differentials in favor of Mobile of at least 2 cents from stations southwest of Columbus to but not including Fort Mitchell, of 4 to 6 cents from stations Fort Mitchell to Hurtsboro, inclusive, and of 6 to 10 cents from stations southwest of Hurtsboro. From Andalusia they ask for a rate to Mobile by way of the Louisville & Nashville 19 cents lower than the rate from that point to Savannah by way of the Central.

The examiner recommended that the adjustment of rates from points southwest of Columbus to but not including Fort Mitchell be found not unduly prejudicial, but that the adjustment from the other points of origin on this line be found unduly prejudicial to Mobile to the extent that the rates to Mobile from stations Fort Mitchell to Hurtsboro, inclusive, are less than 2 cents lower than the rates to Savannah, and to the extent that the rates from points southwest of Hurtsboro are less than 3 cents lower than the rates to Savannah. The same respective differentials were recommended between the rates from Hurtsboro by way of the Seaboard and between the rates from Troy by way of the Coast Line. In their exceptions the defendants make the following statement:

* * * It has been customary in the past for the carriers to keep the rates from Hurtsboro, Union Springs, and Troy on a parity with each other to both Savannah and Mobile, and we think there is every reason why this basis should be continued. To Savannah each of the three towns has had the same rates as the other. To Mobile each of those three have been given the same rates as each of the others. They are in commercial competition with each other and they are served by competing carriers. The distances to Montgomery from the three stations are: Hurtsboro, 56 miles; Troy, 52 miles; Union Springs, 40 miles. We urge that the Commission make the rates from the three stations 2 cents less than to Savannah or the same as proposed at Hurtsboro.

Between Hurtsboro and Union Springs the cross-country distance is approximately 20 miles and between Union Springs and Troy, approximately 30 miles.

By way of the Seaboard Hurtsboro is only 46 miles nearer to Mobile than to Savannah, and the haul to the latter port is one line as against two line to the former. Taken as a single point we should hardly be justified in requiring a greater differential in favor of

Mobile than 2 cents, but, as will later appear in our consideration of Seaboard rates, Hurtsboro is grouped with other points on that line nearer Mobile, and from the group the differential may properly be made 3 cents. At Union Springs and at Troy the evidence fully warrants a spread of 3 cents. The three points may appropriately, therefore, be given a parity of differentials as defendants desire. We adopt the examiner's findings as our own, except that we find that the differential in favor of Mobile should be 3 cents at Hurtsboro, and that the rates from points southwest of Troy are unduly prejudicial to Mobile to the extent that they are less than 4 cents lower than the rates to Savannah. No finding can be made as to the rate from Andalusia to Mobile via the Louisville & Nashville, since that carrier does not participate in rates to Savannah.

(d) *From Montgomery eastwardly through Union Springs to Cuthbert, Ga.*—The following shows the rates and distances from representative points on this line, all being in Alabama except Cuthbert, which is in Georgia:

From—	To Mobile.		To Savannah.	
	Rate.	Distance.	Rate.	Distance.
	Cents.	Miles. ¹	Cents.	Miles.
Montgomery.....	(*)	.....	62	386
Mitchell.....	62	204	62	410
Union Springs.....	62	220	62	338
Eufaula.....	62	259	60	361
Cuthbert.....	65	285	55	346
				307
				334
				272
				308
				247

¹ Via Central, Montgomery, and Louisville & Nashville unless otherwise indicated.

² Central does not participate in traffic from Montgomery to Mobile. Rate of Louisville & Nashville, 50 cents.

³ Via Coast Line.

⁴ Via Seaboard.

⁵ Via Central, Americus, and Seaboard.

From stations immediately southeast of Montgomery, to and including Barachias, the rates are 58 cents to Mobile and 62 cents to Savannah; from the next group of stations, Perry's Mill to Mathews, inclusive, 60 cents to Mobile and 62 cents to Savannah; from the stations southeast of Mitchell, to and including the station immediately northwest of Eufaula, 62 cents to both ports; and from stations east of Eufaula to but not including Cuthbert, 60 cents to Savannah and 65 cents to Mobile.

Defendants observed that the rate from Cuthbert to Savannah was less than the Georgia scale, and stated that it was forced on the Central by competition; that from the entire territory southwest of Macon, Ga., including Cuthbert and surrounding territory, the

short routes to Savannah or Brunswick are not by way of the Central but by way of other carriers through Albany, Americus, and other junctions with the Seaboard or Coast Line; that the mileages of these other carriers from near-by competitive points to Savannah or Brunswick are materially less than those of the Central to Savannah; and that the Central must meet these rates made on such mileage.

We have found that from Union Springs the rate to Mobile should be at least 3 cents lower than the rate to Savannah. The examiner recommended that the adjustment from other points on this line east of Montgomery, to and including Eufaula, should be found unduly prejudicial to the extent that the rates to Mobile exceeded rates made the following differentials under the contemporaneous rates to Savannah: From points to and including Perry's Mill, 6 cents; from points between Perry's Mill and Union Springs, 5 cents; from points east of Union Springs, to and including Eufaula, 2 cents; and that the adjustment from points east of Eufaula should be found unduly prejudicial to the extent that the rates to Mobile exceed those to Savannah.

Complainants do not except to these recommendations. Defendants ask that the differentials in favor of Mobile be made 5 cents from stations to and including Perry's Mill, 3 cents from stations east of Perry's Mill to and including Mitchell, and 2 cents from stations east of Mitchell to and including Three Notch, the next station east of Union Springs. They further ask that we find that from stations east of Three Notch to and including Eufaula the rates to Mobile should not exceed the rates to Savannah, and that from stations east of Eufaula to and including Cuthbert the rates to Mobile should not exceed the rates to Savannah by more than 2 cents.

The Montgomery-Savannah lines of the Central, the Seaboard, and the Coast Line roughly parallel each other for considerable distances. The Seaboard's line is much shorter than either of the other lines, and based upon distance alone the spreads between the rates to Mobile and Savannah would be substantially less from points on the Seaboard than from points on the Central or Coast Line approximately equidistant from Montgomery. Defendants refer by way of illustration to Cottonton on the Seaboard, Eufaula on the Central, and Ariton on the Coast Line, all approximately the same distance from Montgomery, and all having a one-line route to Savannah as against a two-line route to Mobile. The air-line distance between Cottonton and Eufaula is only about 18 miles, and between Eufaula and Ariton about 41 miles. At Cottonton the distances to the two ports are substantially equal; at Eufaula

they favor Mobile by 75 miles and at Arifton by about 70 miles. If the cross-country competition between such points as these is not recognized, defendants say the result will be the preference of the short line and points located thereon, to the disadvantage of the other lines and their competing points. Defendants further direct attention to the fact that the short-line distance from Cuthbert to Savannah is 255 miles, by way of the Georgia, Florida & Alabama Railway, Richland, Ga., and the Seaboard, as against the distance of 285 miles to Mobile. They also refer to the effect of the competition of points in Georgia in the vicinity of Cuthbert. In this connection it may be observed that Richland on the Seaboard, the rates from which are not in issue, is 110 miles, and Cuthbert on the Central, 105 miles, from Montgomery, and that from Richland the distance to Savannah is 62 miles less than to Mobile. The factor of cross-country competition is one to which undue weight may easily be given, but in view of the facts stated we shall make certain modifications in the findings recommended by the examiner.

We find that from stations east of Montgomery to and including Three Notch, the rate adjustment is unduly prejudicial to Mobile to the extent that the rates to Mobile exceed rates made the following differentials under the rates contemporaneously maintained to Savannah: From stations to and including Perry's Mill, 6 cents; from stations between Perry's Mill and Mitchell, 5 cents; from stations Mitchell to but not including Union Springs, 4 cents; from Union Springs and Three Notch, 3 cents; from Midway and Comer, 2 cents; and from stations Batesville to and including Eufaula, 1 cent. We further find that from stations east of Eufaula the rates are unduly prejudicial to Mobile to the extent that the rates to Mobile from stations Georgetown, Wire Bridge, and Hatcher exceed the rates to Savannah, to the extent that the rates to Mobile from stations east of Hatcher to but not including Cuthbert exceed the rates to Savannah by more than 1 cent, and to the extent that the rate to Mobile from Cuthbert exceeds the rate to Savannah by more than 2 cents. The stations named east of Eufaula are in Georgia.

(e) *Ozark branch*.—Eufaula is the main-line junction and Ozark the terminus of the Ozark branch, which lies wholly in Alabama. From stations southwest of Eufaula to and including Doster, all of which are local to the Central, the rates are 65 cents to Mobile and 62 cents to Savannah, and the same rates apply from Barnes Cross Road, a local station between Ozark and Arifton. From Ozark and Arifton, both of which are also located on the main line of the Coast Line, the rates are 62 cents to both ports. No reason appears why the relative adjustment from stations on this branch should not be the same as that from Eufaula, and we accordingly find that the

rate adjustment is unduly prejudicial to Mobile to the extent that the rates to Mobile exceed rates made 1 cent under the rates to Savannah.

(f) *Fort Gaines branch.*—The Fort Gaines branch, which is wholly in Georgia, joins the main line at Cuthbert, and the rates from all the branch points are 60 cents to Savannah and 65 cents to Mobile. In accordance with our finding with respect to the relationship at Cuthbert we find that the rate adjustment from points on the Fort Gaines branch is unduly prejudicial to Mobile to the extent that the rates to Mobile exceed the rates to Savannah by more than 2 cents.

(g) *Lockhart to Walker.*—The following are rates and distances from representative points, all of which are in Alabama except Arlington and Walker, which are in Georgia:

From—	To Mobile.		To Savannah.		To Brunswick.	
	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.
	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
Walker.....	65	1 332 2 351	54	2 308 3 210		
Arlington.....	66	1 307 2 379	55	2 333 3 235	55	2 238
Columbia.....	65	1 281 2 405	60	2 360 3 261		
Dothan.....	65	1 260 2 426 3 288	60	2 331 3 282 4 301	60	2 253
Sellersville.....	62	1 213 2 307 3 473	62	2 329 3 428 4 329		
Florala.....	65	1 191 2 329 3 495	62	2 450 3 351		

1 Via Florala.

2 Via Central all the way.

3 Via Smithville and Montgomery.

4 Via Central, Albany, and Coast Line.

5 Via Georgia, Florida & Alabama Railway, Bainbridge, Ga., and Coast Line.

6 Via Coast Line all the way.

7 Via Coast Line, Montgomery, and Louisville & Nashville.

8 Via Florala, including back haul to Dothan for compression, and return.

From all points on this portion of the Central's lines the rates to Mobile are 65 cents. The rates to Savannah are 55 cents from all points between Walker and Arlington; 57 cents from stations Pearsall to Blakely, inclusive; 60 cents from Lackmans to Columbia, inclusive, and from Dothan; and 62 cents from points between Columbia and Dothan and from points west of Dothan. Lockhart is located less than 2 miles west of Florala. A rate of 60 cents is published from Dothan to Mobile via the Atlanta & St. Andrews Bay Railway, Cottondale, Fla., and the Louisville & Nashville. The rates to Savannah from points between Columbia and Dothan are higher than the rate from Dothan but the departure from the fourth section has been authorized.

On the line from Lockhart to Albany there are two compresses—one at Albany and the other at Dothan. If cotton is concentrated at Albany, the natural route to Mobile is via Smithville, Eufaula, and Montgomery. From points between Dothan and Albany the cotton may be compressed at either point and, if concentrated at Dothan, it is contended by complainants that the rates should be made on the distance via Florala. They make the same contention with respect to cotton from points west of Dothan. Cotton from points west of Dothan would either have to be back-hauled to Dothan for compression or go through flat and be compressed at the port at an additional expense to the shipper of 15 cents per 100 pounds.

The Central contends that the rates should be based on the distances through Smithville and at the time of the second hearing maintained that the Florala route was not open. There is a physical connection between the Louisville & Nashville and the Central at Florala, and it will be observed that the distances through Florala are much less than the distances through Smithville. Whatever may have been the situation in the past, under the effective tariff the rates to Mobile from the points in question apply via Florala as well as via Smithville. On cotton originating at points west of, and concentrated at, Dothan a back haul to that compress point and return to the point of origin is necessary if the traffic is handled via Florala. In the table above the total distances, including the back haul, are shown on such movements from Florala and Sellersville. These total distances are still considerably less than the distances to Savannah. We find that the rates to Mobile from the points in question may reasonably be measured by the distances via the Florala route.

No joint rates are published to Brunswick from points local to the Central, but, as the table shows, there are rates to that port from Dothan via the one-line route of the Coast Line and from Arlington via the Georgia, Florida & Alabama and the Coast Line, these rates being the same as the rates to Savannah and the distances considerably shorter than the distances to either Savannah or Mobile. The short route to Savannah by way of Albany and the Coast Line is entitled to little consideration, because it short-hauls the Central, whose longer one-line route upon the facts before us can not be regarded as unduly circuitous.

We find that the rate adjustments on this portion of the Central's lines are unduly prejudicial to Mobile to the extent that from Walker the rate to Mobile exceeds the rate to Savannah by more than 2 cents; to the extent that from stations southwest of Walker to and including Dothan the rates to Mobile exceed the rates to Savannah; and to the extent that from stations southwest of Dothan the rates

to Mobile exceed rates which are less than 5 cents under the rates to Savannah.

SEABOARD AIR LINE.

(a) *Montgomery to Cottonton.*—From points on this line traffic to Mobile moves via Montgomery and the Louisville & Nashville, while to Savannah it moves over a direct line of the Seaboard all the way. The following are rates and distances from representative points, all of which are in Alabama:

From—	To Mobile.		To Savannah.	
	Rate.	Distance.	Rate.	Distance.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
Cottonton.....	62	259	62	259
Hurtsboro.....	62	235	62	281
Fort Davis.....	62	240	62	326
Chesson.....	62	218	62	299
Mitylene.....	62	204	62	313
Montgomery.....	56	188	62	329
	50	179	62	338

¹ Via Central.

² Via Louisville & Nashville.

The 62-cent rate applies to Mobile from all stations Cottonton to Chesson, inclusive, and to Savannah from all stations here under consideration. From Sledges and McDade, the first two stations west of Chesson, the rate to Mobile is 60 cents, and from stations between McDade and Montgomery, 56 cents.

Complainants ask for differentials of 6 cents at Hurtsboro, 8 cents at Fort Davis, 10 cents at stations west of Fort Davis to and including Chesson, and 12 cents at stations between Chesson and Montgomery. They express satisfaction with the adjustment from stations east of Hurtsboro to and including Cottonton, except that they complain of the establishment since the hearing of a rate of 57 cents on flat cotton from Cottonton to Savannah without the establishment of a like rate to Mobile. Similar rates apply from the other points in question, grading up to a rate of 60 cents applicable from all stations from Roba to but not including Montgomery. According to the evidence of record flat cotton must be compressed at the port by and at the expense of the shipper before it can be exported and the charge for that service is 15 cents per 100 pounds. The total expense to the shipper on a shipment of flat cotton from Cottonton to Savannah for export would thus be 72 cents or 10 cents per 100 pounds greater than the charge on cotton compressed by and at the expense of the carrier. The facts before us do not show in what manner the existence of the 57-cent rate from Cottonton to Savannah operates to the undue prejudice of Mobile.

We find that the rates from stations east of Montgomery to and including Mitylene and from stations east of Hurtsboro to and including Cottonton are not unduly prejudicial, but that the rates from the other stations on this line are unduly prejudicial to Mobile to the extent that the rates to Mobile from stations east of Mitylene to, but not including, Chesson exceed rates which are 5 cents lower than the rates contemporaneously maintained to Savannah; to the extent that the rates to Mobile from stations Chesson to, but not including, Fort Davis exceed rates which are 4 cents less than the rates contemporaneously maintained to Savannah; and to the extent that the rates to Mobile from stations Hurtsboro to Fort Davis, both inclusive, exceed rates which are 3 cents less than the rates contemporaneously maintained to Savannah.

(b) *Birmingham to Cedartown.*—The following are rates and distances from representative points, all of which are in Alabama except Cedartown, which is in Georgia:

From—	To Mobile.		To Savannah.	
	Rate.	Distance. ¹	Rate.	Distance. ²
	Cents.	Miles.	Cents.	Miles.
Cedartown.....	65	377	62	338
Borden Springs.....	65	362	65	353
Piedmont.....	60	353	65	362
Wellington.....	60	320	65	380
Alton.....	62	335	65	433
		309		
		283		

¹ Via Seaboard, Birmingham, and Louisville & Nashville, unless otherwise indicated.

² Via Seaboard, Atlanta, Southern, Helena, Ga., and Seaboard. Via Seaboard, Atlanta, the Birmingham, Cordele, Ga., and Seaboard, distances 61 miles greater; via Seaboard, Atlanta, Central, Americus and Seaboard, 94 miles greater; via Seaboard direct, 294 miles greater.

³ Via Southern.

⁴ Via Louisville & Nashville, Anniston, and Southern.

From these points traffic to Mobile moves via Birmingham and the Louisville & Nashville. To Savannah the Seaboard has a circuitous route through Atlanta, Ga., Monroe and Hamlet, N. C., and Columbia, S. C., the distance from Birmingham being 760 miles as against the short-line distance of 448 miles. Traffic to Savannah moves beyond Atlanta over the Birmingham, Central, or Southern, and is turned over to the Montgomery-Savannah line of the Seaboard at Cordele, Americus, or Helena.

The rates to Mobile are 65 cents from stations Cedartown to and including Virgo; 62 cents from stations between Piedmont and Wellington; and from stations Grays to Alton, inclusive. To Savannah the rates are 62 cents from Cedartown, Akes, and Esom, and 65 cents from all other points. All of these points are in Alabama except the three last named, which are in Georgia.

The examiner recommended that we find that the rate adjustments from points between Birmingham and Wellington and from

points between Wellington and Piedmont are unduly prejudicial to Mobile to the extent that the rates to Mobile exceed rates which are 5 cents lower than the rates to Savannah, and that the rate adjustments from the other points on this line are not unduly prejudicial.

Complainants contend that the differentials, Mobile under Savannah, between the rates from stations between Birmingham and Wellington and between Wellington and Piedmont should be from 7 to 10 cents, "particularly in view of the adjustment at stations on the Southern Railway, Birmingham to Anniston, which is only a short distance cross country." But as the differential between the rates of the Southern, not only from stations Birmingham to Anniston, but also from stations Anniston to Childersburg, is 5 cents, which differential we have found not unduly prejudicial to Mobile, it would seem that the relationship proposed by the examiner is more consistent with the adjustment on the Southern than is the relationship proposed by complainants. Complainants also ask for a greater spread between the rates from Birmingham, but as the Seaboard does not participate in traffic from that point to Mobile it can not be justly charged with undue prejudice because of the rate adjustment therefrom.

The Seaboard asks that the proposed spread of 5 cents between the rates from points between Birmingham and Wellington and between Wellington and Piedmont be reduced to 3 cents. It urges that the diversion of traffic from its Alabama stations to Mobile will substantially shorten its haul and reduce its revenue; that at Savannah it has a considerable investment in terminal facilities both for domestic and export traffic; that it should not be required to maintain to Mobile from its local stations west of Piedmont the same rates as are published by the Southern from cross-country stations, in view of the fact that the Southern has a direct line of its own to Mobile as well as to Savannah; that its rates to Savannah are held down by the Birmingham rate; and that on traffic to Mobile from competitive points on its line, viz, Piedmont and Wellington, it has been granted fourth section relief because of the circuitry of its route. All of the reasons urged by the Seaboard have received consideration but in our opinion they do not justify a lesser spread than that recommended by the examiner.

We find no error in the conclusions proposed by the examiner and adopt them as our own.

ATLANTIC COAST LINE.

The following are rates and distances from representative points, all of which are in Alabama except Donaldsonville and Bainbridge, which are in Georgia:

From—	To Mobile.		To Savannah.		To Brunswick.	
	Rate.	Distance. ¹	Rate.	Distance. ²	Rate.	Distance.
	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
Montgomery.....	50	179	62	410 386 338	62	371
Grady.....	62	209	62	380	62	341
Anasley.....	62	219	62	370	62	331
Troy.....	62	231 250	62	358 376	62	319
Tennille.....	62	255	62	334	62	295
Dillard's.....	62	264	62	326	62	287
Ozark.....	62	271 319	62	318 394	62	279
Midland City.....	65	287	62	302	62	263
Dothan.....	65	298 260	60	291 381	60	252
Alaga.....	65	321	60	268	60	229
Donaldsonville.....	65	325	56	256	52	217
Bainbridge.....	65	304	54	235	50	196

¹ Via Montgomery unless otherwise indicated.

² Via Coast Line all the way unless otherwise indicated.

³ Via Louisville & Nashville; Coast Line does not participate in traffic from Montgomery to Mobile.

⁴ Via Central.

⁵ Via Seaboard.

⁶ Via Central, Florida, and Louisville & Nashville.

⁷ Via Coast Line, River Junction, and Louisville & Nashville.

The Coast Line operates over its own rails to Savannah and Brunswick, the distances to the latter port being 39 miles less than to the former. To Mobile the traffic moves via Montgomery and the Louisville & Nashville, except that from points east of Ozark it may move via River Junction, Fla., and the Louisville & Nashville. From stations Donaldsonville to Bainbridge, inclusive, the short-line route is via River Junction.

The rates to Mobile are 58 cents from the first two stations east of Montgomery; 60 cents from the next two; 62 cents from stations LeGrand to and including Ozark; and 65 cents from points east of Ozark. To Savannah the rates are 62 cents from stations east of Montgomery to and including Midland City; 60 cents from stations east of Midland City to and including Alaga; 57 cents from the next two stations, Saffold and Jakin; 56 cents from the next three stations, Donaldsonville, Lela, and Iron City; 55 cents from the next two stations, Brinson and Cyrene; and 54 cents from Bainbridge. Stations east of Alaga are in Georgia. To Brunswick the rates are the same as to Savannah, except that from stations east of Alaga they are in each instance 4 cents lower.

The examiner recommended that the rate adjustments at points east of Montgomery to and including Arifton be found unduly prejudicial to the extent that the rates to Mobile are less than the following differentials under the rates to Savannah: From stations Wiley to Sprague, inclusive, the distances from which favor Mobile by from 218 to 194 miles, 6 cents; from stations between Sprague and Troy, the distances from which favor Mobile by from 180 to 143

miles, 5 cents; from stations Troy to Brundige, inclusive, 3 cents; and from Tennille and Ariton, 2 cents. He further recommended that the adjustments from stations east of Ariton be found unduly prejudicial to the extent that the rates to Mobile from stations Dillard's to Dothan, inclusive, are higher than the rates to Savannah, and to the extent that the rates to Mobile from stations Cowarts to Bainbridge are more than 3 cents higher than the rates to Savannah.

Complainants contend that the differentials in favor of Mobile should be 12 cents at stations Wiley to Sprague, inclusive; 10 cents at stations east of Sprague, to and including Troy; graded from 10 to 8 cents at stations Troy to Brundige, inclusive; 7 cents at Tennille and Ariton; graded from 7 cents to nothing at stations Dillard's to Dothan; and that from stations Cowarts to Bainbridge the rates to the two ports should be on a parity.

Defendants ask that from stations east of Montgomery to and including Tharin the differential in favor of Mobile be made only 5 cents; from the next group of stations to and including Ansley, 3 cents; and from the next group of stations to and including Tennille, 2 cents; that from stations Ariton to Dothan, both inclusive, a parity of rates be prescribed; and that differentials in favor of Savannah of at least 3 cents from stations east of Dothan to and including Alaga, and of at least 5 cents from stations east of Alaga to and including Bainbridge, be prescribed. They state that cotton will not move to Mobile from points on this line via River Junction because no compress facilities are available and that therefore that route should be eliminated from consideration.

In connection with the adjustment from points on the Central between Montgomery and Cuthbert we discussed the fact that the portions of the Montgomery-Savannah lines of the Coast Line, the Central, and the Seaboard, under consideration in this proceeding, roughly parallel each other, and the effect of this situation on the rate adjustments. At Troy, Ariton, Ozark, and Dothan we have already determined the relationship. For these reasons and because of the fact that the River Junction route is not available for this traffic, we think the proposed conclusions of the examiner should be modified.

Upon the facts before us we find that the rate adjustments from points east of Montgomery to and including Ozark are unduly prejudicial to Mobile to the extent that the rates to that port exceed rates which are the following differentials less than the rates to Savannah: From stations east of Montgomery to and including Tharin, 6 cents; from stations east of Tharin to and including Ramer, 5 cents; from stations east of Ramer to and including Ansley, 4 cents; from stations east of Ansley to and including Troy, 3 cents; from stations

east of Troy to and including Brundige, 2 cents; and from stations east of Brundige to and including Ozark, 1 cent. We further find that the rate adjustments from stations east of Ozark are unduly prejudicial to Mobile to the extent that the rates to Mobile from stations to and including Dothan exceed the rates to Savannah, to the extent that the rates to Mobile from stations east of Dothan to and including Alaga exceed the rates to Savannah by more than 3 cents, and to the extent that the rates to Mobile from stations east of Alaga to and including Bainbridge exceed the rates to Savannah by more than 5 cents.

WESTERN RAILWAY OF ALABAMA AND ATLANTA & WEST POINT RAILROAD.

The Western Railway of Alabama extends from Selma, Ala., through Montgomery to West Point, Ga., and the Atlanta & West Point from West Point to Atlanta, through La Grange, Ga. The rates from points east of Montgomery to and including La Grange are in controversy here. The following table shows the rates and distances from representative points, all of which are in Alabama except the three first named, which are in Georgia:

From—	To Mobile.		To Savannah.		To Brunswick.	
	Rate.	Distance. ¹	Rate.	Distance. ²	Rate.	Distance.
	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
La Grange.....	63	283	60	332	59	287
Cannonville.....	63	276	60	278		
West Point.....	60	267	60	292		
Nelson.....	60	261	65	339		
Andrews.....	60	250	65	348		
Opelika.....	60	245	65	353		
Auburn.....	60	238	60	365		
Chehaw.....	60	218	60	370		
Clough's.....	55	215	60	377		
Tysonville.....	55	200	65	380		
Mount Meigs.....	52	193	67	397		
Montgomery.....	50	179	67	400		
			64	415		
				422		
				436		
				410		
				386		
				338		

¹ Via Louisville & Nashville beyond Montgomery, unless otherwise indicated.

² Via Atlanta & West Point, Atlanta, and connections, unless otherwise indicated. Via Newnan, Ga., and Central, distances are 13 miles less.

³ Via Atlanta, Birmingham & Atlantic; short line.

⁴ Short line; via Macon & Birmingham Railway, Macon, Macon, Dublin & Savannah Railroad, Vidalia, and Seaboard.

⁵ Via Atlanta, Birmingham & Atlantic, Cordele, and Seaboard.

⁶ Via Central, Columbus, Montgomery, and Louisville & Nashville.

⁷ Via Central.

⁸ Via Louisville & Nashville.

⁹ Via Coast Line.

¹⁰ Via Seaboard.

To Mobile the rates are 63 cents from stations La Grange to but not including West Point; 60 cents from stations West Point to Chehaw, inclusive; 55 cents from stations between Chehaw and 57 I. C. G.

Mount Meigs; and 52 cents from stations Mount Meigs to but not including Montgomery. To Savannah the rates are 60 cents from stations La Grange to West Point, inclusive; 65 cents from stations between West Point and Opelika and from stations between Opelika and Fuller; 67 cents from stations Fuller to Oakview, inclusive; and 64 cents from stations Mount Meigs to but not including Montgomery.

It is apparent that on traffic from La Grange to Savannah the Atlanta & West Point is at a disadvantage because of the competition of shorter routes. Defendants aver that from stations Cannonville to West Point, inclusive, the Atlanta & West Point must, on account of cross-country competition, maintain rates to Savannah not more than 1 cent over the rates of the Birmingham from stations on its line to Brunswick. The Birmingham's rates to Brunswick from La Grange and points east thereof are graded with the distance, the rate from La Grange being 59 cents. Approaching Montgomery the Western Railway of Alabama encounters the competition of the Seaboard's short line to Savannah. From Opelika the Western Railway of Alabama and the Central maintain the same rate, 60 cents, to both Mobile and Savannah, the former having a much shorter route than the latter to Mobile, and the latter having the advantage to Savannah. We found that by way of the Central the adjustment from Opelika was not unduly prejudicial.

The examiner recommended that the adjustments from stations La Grange to Andrews, inclusive, be found unduly prejudicial to Mobile to the extent that the rate from La Grange to Mobile exceeds the rate to Savannah by more than 2 cents, and to the extent that the rates to Mobile from stations Cannonville to West Point, inclusive, exceed the rates to Savannah, and that the adjustments from other points on this line be found not unduly prejudicial.

Defendants filed no exceptions to these recommendations. Complainants contend that the rates to the two ports from La Grange should be on a parity, and that Mobile is entitled to differentials of 2 cents at West Point, 5 cents at Opelika, and 8 cents at stations Auburn to Chehaw.

Prior to June 25, 1918, the Atlanta & West Point maintained the same rate from La Grange to Savannah as to Brunswick, but the rate to Brunswick is now 1 cent lower. While at Opelika we found that the Central's rate could not reasonably be measured by the short-line route of the Western Railway of Alabama, there seems also no sufficient reason for measuring the latter's rate by the longer route of the Central. We adopt the conclusions recommended by the examiner except that we find the adjustment unduly prejudicial to Mobile: At La Grange, to the extent that the rate to Mobile exceeds the rate to Savannah; at Opelika, to the extent that the rate to Mobile exceeds

a rate 5 cents under the rate to Savannah; and at stations Auburn to Chehaw, inclusive, to the extent that the rates to Mobile exceed rates made 8 cents under the rates from the same points to Savannah.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY.

The Birmingham has a line extending from Birmingham to Brunswick. It reaches Savannah in connection with the Seaboard via Cordele and with the Coast Line via Offerman, Ga. Traffic to Mobile is delivered to the Southern either at Birmingham or Talladega. The rates from La Grange and points west thereof are here in issue. The following are rates and distances from representative points, all of which are in Alabama except La Grange and Abbottsford; the rates prior to General Order No. 28 are also shown for purposes of comparison:

From—	To Mobile.		To Savannah.		To Brunswick.	
	Rate.	Distance.	Rate.	Distance. ¹	Rate.	Distance. ²
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
La Grange.....	63 48	368 283	60 44	292 278 332	59 44	287 292
Abbottsford.....	65 50	363 349	62 45	302	60 45	297
Standing Rock.....	68 50	349 339	62 47	306	60 47	301
Roanoke.....	65 50	339 314	62 47	316 359	62 47	311 327
Talladega.....	60 45	347 272	65 50	353 419	65 50	378 398
Pelham.....	60 50	257	65 50	433	65 50	428
Birmingham.....	60 45	271	65 50	458 443	65 50	453 448

¹ Via Cordele and Seaboard unless otherwise indicated.

² Via Atlanta, Birmingham & Atlantic all the way unless otherwise indicated.

³ Via Talladega and Southern.

⁴ Via Atlanta & West Point, Western Railway of Alabama, Montgomery, and Louisville & Nashville.

⁵ Shortline. Via Macon & Birmingham Railway, Macon, Macon, Dublin & Savannah Railroad, Vidalia, and Seaboard.

⁶ Via Macon & Birmingham Railway, Macon, and Southern.

⁷ Via Atlanta & West Point, Atlanta, and connections.

⁸ Via Chattahoochee Valley Railway, West Point, Western Railway of Alabama, Montgomery, and Louisville & Nashville.

⁹ Via Atlanta, Birmingham & Atlantic, Birmingham, and Southern.

¹⁰ Via Central all the way.

¹¹ Via Central, Albany, and Coast Line.

¹² Via Central, Columbus, Montgomery, and Louisville & Nashville.

¹³ Via Southern all the way.

¹⁴ Via Louisville & Nashville all the way. Atlanta, Birmingham & Atlantic does not now participate in traffic to Mobile from Pelham and points west thereof.

¹⁵ Via Southern.

To Mobile the Birmingham's rates are 65 cents from all points except La Grange, Standing Rock, and Talladega. To Savannah the rates are 62 cents from stations between La Grange and Dickert, the next station west of Roanoke; and 65 cents from stations Dickert to Birmingham, inclusive. To Brunswick the rates are 60 cents

from stations between La Grange and Roanoke; 62 cents from stations Roanoke to but not including Talladega; and 65 cents from stations Talladega to Birmingham, inclusive.

We found that the rate from La Grange to Mobile by way of the Atlanta & West Point and the rate from Roanoke to Mobile by way of the Central should not exceed the corresponding rates to Savannah, but it will be observed that by way of the Birmingham the distances from those two points of origin are relatively much less favorable to Mobile than via the other routes. On traffic from Talladega to Mobile the Birmingham has been granted relief from the provisions of the fourth section because of the circuitry of its route. It maintains the same rates as the Southern from that point of origin to both Mobile and Savannah.

The examiner recommended that the rates from La Grange, Talladega, and Birmingham be found not unduly prejudicial, but that the rates from the other points of origin be found unduly prejudicial to Mobile to the extent that the rates to Mobile from stations between La Grange and Standing Rock exceed the rates to Savannah by more than 3 cents; to the extent that the rates to Mobile from stations Standing Rock to but not including Talladega exceed the rates to Savannah by more than 1 cent; and to the extent that the rates to Mobile from stations between Talladega and Birmingham are less than 5 cents lower than the rates to Savannah.

Complainants except to the proposed findings, contending that the rates from La Grange should be on a parity; that from stations between La Grange and Standing Rock there should be a differential of at least 3 cents in favor of Mobile; that from stations Standing Rock to Talladega, inclusive, there should be a graduated scale of differentials of from 4 to 8 cents in favor of Mobile; and that from stations between Talladega and Birmingham the differentials should be from 8 to 10 cents in favor of Mobile. These contentions are based on the differences between the distances to Mobile and Savannah.

The exceptions on behalf of the Birmingham were directed against the proposed differential of 5 cents in favor of Mobile from stations between Talladega and Pelham. We are asked to find that the present parity of rates is not unduly prejudicial. It is argued that the Birmingham does not reach Mobile with its own rails as does the Southern and that the effect of prescribing the same differentials from stations between Talladega and Birmingham on the Birmingham as prescribed from stations on the Southern between the same points will have the effect of compelling the former to maintain to Mobile over its two-line hauls the same rates as the Southern maintains for its substantially shorter single-line hauls. The rates to

Savannah, it is stated, are held down by the competitive rate from Birmingham. The present rate to Mobile from these points of origin on the Birmingham is 5 cents higher than the Southern's rate from Birmingham and Talladega to the same port, and it is observed that the Southern applies its Talladega-Mobile rate from Marion Junction, Ala., only 160 miles north of Mobile, while the distances from stations on the Birmingham are illustrated by the distance of 347 miles from Talladega.

But this defendant is not at any material disadvantage on the traffic to Savannah, and it does not appear that its rates to that port from Birmingham and intermediate points are subnormal. Under the circumstances there is no justification for refusing to accord Mobile an equitable rate relationship with Savannah. It is to be observed that whatever relationship is prescribed between Mobile and Savannah will also apply between Mobile and Brunswick and therefore in determining what differential Mobile should take under Savannah consideration should be accorded to the distances to Brunswick and the fact that the haul to that port is one line.

At present the rates to Mobile from La Grange and stations west thereof, with the exception of Standing Rock, to and including Roanoke, are 3 cents higher than to Savannah; the rates to the two ports from stations between Roanoke and Talladega are on a parity; and the rate from Talladega to Mobile is 5 cents less than the rate to Savannah. These adjustments we do not find unduly prejudicial, except that the differential at Standing Rock should be reduced to 3 cents. But we find that the rates from stations between Talladega and Pelham are unduly prejudicial to Mobile to the extent that the rates to Mobile exceed rates made the following differentials under the rates to Savannah: From stations west of Talladega to and including Harpersville, 2 cents; and from stations between Harpersville and Pelham, 3 cents.

An order giving effect to our findings herein will be entered.

57 I. C. C.

No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted April 16, 1920. Decided May 18, 1920.

Finding in *Arlington Heights Fruit Exchange v. S. P. Co.*, 39 I. C. C., 88, and 45 I. C. C., 248, denying reparation on precooled and pre-iced oranges transported from California points to destinations in other states and in Canada, reaffirmed on reargument.

William E. Lamb for California Fruit Growers Exchange.

T. J. Norton for Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and San Pedro, Los Angeles & Salt Lake Railroad Company.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION ON SUPPLEMENTAL PETITION FOR REPARATION.

DANIELS, *Commissioner*:

In *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, decided January 14, 1911, we found that defendants' standard refrigeration charges on carload shipments of oranges from California points were not unreasonable, but that the \$30 precooling charge first established by the carriers in July, 1909, on precooled and pre-iced oranges should not for the future exceed \$7.50 per car. In prescribing that charge we authorized the carriers to require as a condition of the new charge that precooled cars be loaded seven tiers wide, instead of six tiers wide, a method of loading permitted in the case of shipments moving under standard refrigeration. The effective date of our order was originally made April 15, 1911, but was extended to June 15, 1911, when the \$7.50 charge became effective. In our supplemental report in this case on complainant's supplemental petition for reparation, 45 I. C. C., 248, decided June 20, 1917, we reaffirmed our previous finding of April 27, 1916, 39 I. C. C., 88, denying reparation on carload shipments of precooled and pre-iced oranges transported from originating points in California to destinations in other states and in Canada. On most of the shipments on which reparation was sought a precooling charge of \$30 was collected. On the remaining shipments, which were made prior to the establishment of that charge, standard refrigeration charges higher than the precooling charge were assessed and collected. Upon complainant's

57 I. C. C.

petition, filed January 8, 1920, asking that we again reconsider our denial of reparation, particularly in view of subsequent decisions of the Supreme Court of the United States in the *Darnell-Taenzer Case*, 245 U. S., 531, and of this Commission in the *Sloss-Sheffield Case*, 51 I. C. C., 635, and 52 I. C. C., 576, the supplemental proceeding for reparation was reopened for further argument, and such further argument was had April 16, 1920. Complainant asserts that the points raised by it in justification of the petition may be said to center in the two following general grounds:

1. That we erred in failing to decide, based upon a full consideration of all the facts of record, whether the \$30 precooling charge was unreasonable from the time it was established and up to and including the original decision and the effective date of our order.

2. That if we in fact decided on the present record that the precooling charge had not been shown to have been unreasonable and such decision was due to our determination that the record was insufficient we erred, in view of our decisions in the *Sloss-Sheffield Case*, *supra*, in failing to give complainant the opportunity to offer further proof, and thus furnish a full and complete record upon which we would be able to reach a correct determination of the issue raised.

We deem it appropriate at the outset to dispose of one of the fundamental questions raised by the petition. Complainant insists that in our two previous decisions denying reparation our conclusions were based on the erroneous theory that we had a discretion to refuse awards of reparation even though complainant had been required to pay unreasonable charges; that under the principles laid down in the *Darnell-Taenzer* and *Sloss-Sheffield Cases*, *supra*, complainant is entitled to a finding as to the reasonableness of the charges in the past, and, if the charges were in fact unreasonable, to an award of reparation on shipments on which it paid and bore the unreasonable charges.

Complainant refers to the fact that in our first decision in this reparation proceeding, 39 I. C. C., 88, we made no specific finding as to the reasonableness of the charges in the past, and while conceding that in our latest decision, 45 I. C. C., 248, we found that the precooling charge had not been shown to have been unreasonable prior to the effective date of our order, urges that other language used in the report indicates that we were undertaking to ascertain whether damage had actually occurred before determining whether the charge was unreasonable. It is unnecessary here to enter into an extended discussion of the arguments advanced by complainant with respect to this contention. It is sufficient to state that in order that there may be no misapprehension as to the principles upon which our conclusions herein are based we now hold, following the *Darnell-Taenzer* and *Sloss-Sheffield Cases*, *supra*, that com-

plainant was entitled to a finding as to the reasonableness of the charges in the past; and, upon a finding that the charges assailed had been shown to have been unreasonable, to an award of reparation on shipments on which it paid and bore the charges.

While in our decision of April 27, 1916, we did not in express terms find that the precooling charge was unreasonable in the past, the fair inference to be drawn from the language used was, as stated in our last decision of June 20, 1917, that in our opinion the then prevailing charge had not been proved to have been unreasonable. In the latter decision we said at page 252:

We now find that the precooling charges have not been shown to have been unreasonable prior to the effective date of our order. It follows that there is no basis for reparation. And lest we be held to have been inconsistent by establishing a charge for precooling for the future and refusing to find that a similar charge for the same service would have been reasonable in the past, we again advert to the fact that the new duplex regulation or practice we prescribed for the future was composed of two inseparable factors, a lower charge per car, decreasing the carriers' revenue as to the service they performed in connection with precooled shipments of oranges, accompanied by a condition for a higher minimum loading requirement, materially increasing the revenue which would accrue to the carriers in the future for the transportation service.

Complainant concedes that a shipper may be entitled to a new rate for the future and not to reparation for the past, *Baer Bros. v. Denver & R. G. R. R.*, 233 U. S., 479, but contends that we were not justified in the instant case in applying a different measure of reasonableness for the past than for the future. It alleges that the language used indicates that the considerations which moved us to make that finding were based on the erroneous assumption that in our original decision establishing the charge for the future we had imposed a condition with respect to loading requirements which did not exist in the past. Complainant contends that the shippers were voluntarily adopting the heavier loading of cars of precooled oranges from the inception of the precooling method and points to the fact, as shown by the record, that the majority of the cars involved in the claim for reparation were loaded seven tiers wide. We do not, however, regard this circumstance as controlling. The \$30 charge and the minimum weight published in connection therewith contemplated the loading of cars only six tiers wide. Because the shippers voluntarily loaded the cars in excess of the minimum-loading requirements on which the charge was based, it by no means follows that the higher charge with the lower minimum should be found to have been unreasonable. Furthermore, as we have pointed out in the previous decisions in this case, in establishing the \$7.50 charge for the future with the requirement that the cars must be loaded seven tiers wide, we were prescribing a new rate and minimum for a new service, a method of shipment which up to that time had been in a largely experimental state.

We find nothing in the *Sloss-Sheffield Case*, *supra*, upon which complainant largely relies, which conflicts with our findings in this case. In fact, in the *Sloss-Sheffield Case*, 51 I. C. C., 635, we said, at page 643:

We hold that the domain for the legal exercise of a sound discretion and reasonable flexibility of judgment has not been closed against us so that we are forbidden to shape our action in such manner as will, in view of all the circumstances of the case, best promote the ends of justice, taking into account the public as well as the private interests involved.

As to the second general ground alleged by complainant, the facts on which this proceeding was submitted were stipulated in considerable detail by the parties and are not disputed. It does not appear that any additional evidence that complainant might offer would modify the essential facts upon which our conclusion was based.

With respect to the precooled shipments on which standard refrigeration charges were assessed, complainant contends that as to some of these shipments which were included in the supplemental petition for reparation we erred in our last decision in holding that the claims were barred by the statute of limitations. Even if we should consider that the claims as to such shipments were not barred, it appears that they moved prior to the establishment of the \$30 precooled charge during which period the tariffs of defendants contained no specific provision for precooled shipments and for the forwarding of such shipments under instructions not to re-ice in transit. As stated in our first decision in this reparation proceeding, 39 I. C. C., 88, refrigerator cars were used in such movements and to a certain extent, at least, refrigeration service as then practiced was accorded by the carriers. Furthermore, in connection with the subsequently established \$30 charge for precooled shipments under instructions not to re-ice in transit the shipper was required under the provisions of the tariffs to sign the following release:

The giving and acceptance of these special instructions from the shipper releases the initial carrier and its connections from all liability for damage caused by non-icing in transit or at destination.

Upon consideration of the whole record and in the exercise of "that flexible limit of judgment which belongs to the power to fix rates" we find that the charges assailed have not been shown to have been unreasonable prior to the effective date of our order establishing the \$7.50 charge for application in connection with the minimum-loading requirement of seven tiers wide. We accordingly reaffirm our previous findings that reparation be denied.

No. 5504.

COTTON MANUFACTURERS' ASSOCIATION OF SOUTH CAROLINA

v.

CAROLINA, CLINCHFIELD & OHIO RAILWAY, DIRECTOR GENERAL, ET AL.

Submitted January 21, 1920. Decided May 18, 1920.

1. Upon further consideration original and supplemental decisions herein, 37 I. C. C., 652, and 53 I. C. C., 741, modified.
2. Rates on bituminous coal, in carloads, from Appalachia and Dante districts in Virginia to Spartanburg and other points in South Carolina taking same or related rates, found to have been unreasonable between October 15, 1911, and December 31, 1915. Reparation awarded.
3. Reparation awarded to certain interveners in this proceeding upon shipments of coal moving at the rates found unreasonable in the supplemental report, 53 I. C. C., 741.

William A. Wimbish and W. N. McGehee for complainants.

Frank W. Gwathmey and Charles J. Rixey, jr., for Carolina, Clinchfield & Ohio Railway.

Claudian B. Northrop for Southern Railway Company and Virginia & Southwestern Railway Company.

R. Walton Moore for Director General of Railroads.

Charles J. Rixey, jr., for defendants.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The history of this proceeding is detailed in *Bituminous Coal Rates to the Southeast*, 37 I. C. C., 652, and supplemental report herein, 53 I. C. C., 741, and for the purpose of this report may be summarized as follows:

By complaint filed February 6, 1913, the rates on bituminous coal, carloads, from mines on the Carolina, Clinchfield & Ohio and Virginia & Southwestern railroads, hereinafter referred to as the southwestern Virginia mines, to Spartanburg, S. C., were alleged to be and to have been for more than two years preceding the filing of the complaint unjust, unreasonable, and excessive to the extent of 10 cents per ton. The establishment of just, reasonable, and equal rates for the future was prayed; also an award of reparation on

shipments within the two years statutory period to the extent of the difference between the charges paid and the charges that would have accrued at such reasonable rates as might be established. The presentation of evidence was concluded on September 19, 1913, but on November 10, 1913, before the case was submitted, we instituted a general investigation concerning the rates on bituminous coal from mines in Virginia, West Virginia, Kentucky, and Tennessee to points in Virginia, North Carolina, South Carolina, Georgia, and Florida, and therewith merged the record in this case. In our report therein, *Bituminous Coal Rates to the Southeast, supra*, decided December 31, 1915, we held that the rate from the Appalachia and Dante districts, comprising the southwest Virginia fields, to Spartanburg should not exceed \$1.85 per net ton, and should in no event exceed the rate contemporaneously charged from Coal Creek to that point, and that the rates to points beyond Spartanburg, embracing the other points of destination here concerned, should not exceed those contemporaneously maintained from Coal Creek to the same destinations. We made no specific finding as to the reasonableness or propriety of the rates in the past, stating with respect to the prayers for reparation in this and other formal complaints there under consideration that:

Under the circumstances and in view of the nature of this proceeding the prayers for reparation in the several petitions will be denied.

Upon complainant's petition, in which it abandoned claims as to shipments moving prior to October 15, 1911, this case was reopened for further argument with respect to reparation, and we were asked under the finding made in 37 I. C. C., 652, to award reparation to complainants from October 15, 1911, in the amount of 10 cents a ton, with interest. On July 5, 1919, we made our supplemental report herein, 53 I. C. C., 741, in which we held that the rates on bituminous coal, carloads, from the Appalachia and Dante districts in Virginia to Spartanburg and other points in South Carolina taking the same rates had been unreasonable between December 31, 1915, the date of the original decision and the effective date of the rates prescribed therein, and awarded reparation for that period. In that report we said, among other things:

Defendants urge that our original decision deals solely with the rate relationships of the different producing fields and that our findings with respect to the rates from the southwestern Virginia fields to Spartanburg and related points do not constitute findings of unreasonableness *per se*. We do not agree with this contention. The fact that a general investigation was instituted did not relieve us of the duty of passing upon the issues of this case, one of which was the unreasonableness *per se* of the rates assailed. And not only did we determine the relationship between the southwestern Virginia fields on the one hand, and the Coal Creek district on the other, by providing that no higher rates should apply to Spartanburg from the former than from the latter, but we pre-

scribed a maximum rate of \$1.85 from the southwestern Virginia fields to Spartanburg. We also stated that, "having found that the differential in favor of Coal Creek should be eliminated at Spartanburg by a reduction in the rates from the Virginia mines, it follows that it should also be eliminated when the destination is a point beyond Spartanburg," which, in so far as the rates to the Spartanburg common and related points here in question are concerned, was equivalent to a finding of unreasonableness.

On September 15, 1919, complainant filed its second supplemental petition in the matter of reparation, on which a further argument was granted.

A further hearing was not requested and therefore we have no new or additional evidence to consider. The questions presented for determination are whether the rates from the southwest Virginia mines to Spartanburg and related points reached by defendant lines were unreasonable between October 15, 1911, and December 31, 1915; and if so, whether reparation should be awarded.

The principles which control our determination of these questions and the principal facts and contentions are set forth in the previous reports in this proceeding and need not be restated. It is sufficient to say that the record shows in detail the circumstances and conditions surrounding the traffic for several years prior to the filing of the complaint, as well as subsequently, particularly those obtaining from October 15, 1911, when the rates complained of were established to June 13, 1914, when the hearings were concluded. The record embraces exhaustive evidence concerning the commercial conditions affecting the production and marketing of coal and the history of the rates attacked; comparisons with rates on coal applying in the same territory and in other localities supplemented by statements of fact showing the similarity or dissimilarity of the transportation conditions affecting such rates; statistical data pertaining to the cost of transportation of coal between respective points; evidence as to the volume of the traffic and the physical conditions surrounding its transportation; and evidence showing the final results from the operation of the lines of respective carriers defendant. Throughout the entire period covered by the complaint there were no important variations in the rates and the record shows that there were no substantial changes in the circumstances and conditions affecting the service or cost of transporting coal except perhaps with respect to the volume of movement and a gradual increase in the general operating expenses of the carriers as compared with their operating revenue.

Defendants urge in argument and on brief that the rate complained of is not shown by the record to have been unreasonable or extortionate; that the only question supported by the evidence was one of relative rates or undue discrimination and that we were

correct in declining to award reparation because no evidence was introduced by complainant to show special pecuniary damage. They also cited numerous authorities purporting to show that to justify an award of reparation the rates complained of must be shown to be arbitrary or extortionate, and that because a rate is found unreasonable it does not necessarily follow that reparation must be awarded. We have uniformly held, however, that the party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable by us. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, 205; *Mountain Ice Co. v. D., L. & W. R. R. Co.*, 21 I. C. C., 45; *In re Wool, Hides, and Pelts*, 25 I. C. C., 675; *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, 237.

Complainant contends that in the instant case the whole record shows that the facts and circumstances upon which we based our finding of unreasonableness as of December 31, 1915, were not peculiar to the moment when the complaint was filed or to the moment when the case was decided, but that they had undergone no substantial change since October 15, 1911; and that if the rates complained of were unreasonable *per se* as of December 31, 1915, to the extent that they exceeded \$1.85 a ton from southwest Virginia mining districts to Spartanburg, they were likewise unreasonable during the period between October 15, 1911, and December 31, 1915, and that reparation follows as a matter of law.

In support of the claim for reparation complainant relies upon our decisions in our report on rehearing in *Federal Glass Co. Case*, 38 I. C. C., 331, and in fifth supplemental report in *Sloss-Sheffield Case*, 52 I. C. C., 576. In both of these cases we denied reparation in the original reports and upon further consideration awarded reparation in the later reports above cited. In each case it was shown that the facts and circumstances disclosed by the record were not peculiar to the moment when the complaint was filed or to the moment when the case was decided, but that they had undergone no substantial change during the two years immediately preceding the filing of the complaint and that some of them had existed for a number of years prior thereto.

Upon further consideration of all the facts of record we conclude and find that during the period from October 15, 1911, to December 31, 1915, the rates assailed were unreasonable to the extent that they exceeded the rates found reasonable for the future in our report in *Bituminous Coal Rates to the Southeast, supra*.

We further find that complainant's members specified in the complaint made shipments of bituminous coal in carloads during the period stated, from and to the points in question and paid and bore

the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation can not be determined upon the present record and complainants should comply with the provisions of rule V of the Rules of Practice.

There remains for consideration the claim of interveners for reparation. A proposed report of the examiner upon this question was served upon the parties, and exceptions thereto were filed by the defendants.

The intervening petition, received by the Commission on April 30, 1917, asks reparation on behalf of the Gault Manufacturing Company and the Excelsior Knitting Mills of Union, S. C., and the Pendleton Manufacturing Company of Autun, S. C., on shipments of bituminous coal during the period from May 1, 1915, to August 21, 1916. In the first supplemental report it was stated that:

As no proof has been offered on behalf of these additional parties, a hearing will be had on this intervening petition at an early date, at which time opportunity will be afforded for the introduction of the proof necessary to support awards of reparation in accordance with the findings herein.

A further hearing has been had. At this hearing it developed that the Pendleton Manufacturing Company was a member of the complainant association specified in the complaint and that the name of this company was inadvertently included in the intervening petition. As the finding of damage and the award of reparation in the first supplemental report applies to the Pendleton Manufacturing Company it will not be necessary further to refer to the claim of that company here.

This record now contains evidence, in the shape of testimony for the Excelsior Knitting Mills, and an affidavit for the Gault Manufacturing Company, introduced with defendants' consent, that, during the period from December 31, 1915, to August 21, 1916, those companies received shipments of bituminous coal in carloads at Union, S. C., from the points of origin here in question, over defendants' lines, and paid and bore the freight charges thereon.

While the intervening petition was received on April 30, 1917, the order permitting the intervention was not entered until April 14, 1919, and was not served upon defendants until five days later. Defendants contend that the statute of limitation was not tolled until the entry of the Commission's order permitting the intervention, and, therefore, that the claims of the interveners for reparation on shipments moving during the period in question are barred. It is our opinion that this contention is not well founded and that the filing of the intervening petition tolled the statute irrespective of the date

of the order. Defendants further contend that the rates paid were reasonable and that there was insufficient proof of damage. It is sufficient to say that the question of unreasonableness has already been determined, and that interveners paid and bore the charges on the shipments here in question.

We find that during the period from December 31, 1915, to August 21, 1916, the interveners Excelsior Knitting Mills and Gault Manufacturing Company made shipments of bituminous coal in carloads from the points of origin here in question to Union, S. C., and paid and bore the charges thereon at the rates found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable in the first supplemental report in this proceeding, and that they are entitled to reparation, with interest. The exact amount of reparation due interveners Excelsior Knitting Mills and Gault Manufacturing Company can not be determined on the present record and they should comply with rule V of the Rules of Practice.

As no proof has been made by interveners with respect to shipments moving prior to December 31, 1915, a further hearing will be had on their intervening petition, at which they will be afforded an opportunity to offer such proof as is necessary to support an award of reparation on those shipments under the findings in this proceeding.

DANIELS, *Commissioner*, dissenting:

A succinct summary of the *Black Mountain Case*, the *Andy's Ridge Case*, and the *Victor Mfg. Co. Case* will be found in *Bituminous Coal Rates to the Southeast* in 37 I. C. C., pp. 655, 656, 657.

Until the pronouncement in the last-named case that the rates from Appalachia and Dante to Spartanburg should not exceed \$1.85, and in no event exceed the rate from Coal Creek to Spartanburg, the Commission's attitude as to the relative rates was apparently as follows:

(1) In the *Black Mountain Case*, 15 I. C. C., 286, decided February 8, 1909, we affirmatively approved a differential from Appalachia over Coal Creek not to exceed 25 cents.

(2) In the *Andy's Ridge Case*, 18 I. C. C., 405, decided in April, 1910, we decided not to increase said differential though cognizant of the building of the cut-off which lessened the distance from Appalachia.

(3) In the *Victor Mfg. Co. Case*, 21 I. C. C., 222, decided June 20, 1911, we allowed the Coal Creek rate to Spartanburg to go up from \$1.80 to \$1.85, denying the attempted increase to \$1.95; and remarked (p. 229) that the rate of \$1.85 there approved will in-

crease the differential against Virginia fields, Appalachia and Dante, from 10 to 20 cents. We there said we were urged by the Virginia interests to eliminate the differential altogether, but concluded under all the circumstances to let the carriers work out a proper adjustment, remarking that we would not fix a differential over Coal Creek to apply to Virginia & Southwestern mines, but distinctly declining to be regarded as approving the 20-cent differential alluded to above.

Consideration of our attitude leaves me with the impression that we were not then willing to say that there should be no differential, and that we rather expected the carriers to work the situation out with a differential less than 20 cents.

Not until the report covering the general investigation into *Bituminous Coal Rates to the Southeast*, 37 I. C. C., 652, decided December 31, 1915, with which Docket No. 6324 had been consolidated, did we declare for a parity between Coal Creek and the Appalachia and Dante districts. Even there we note that Coal Creek is nearer to Spartanburg by 33 miles than Appalachia and by 8 miles than Dante.

I incline, therefore, to think, that prior to December 31, 1915, we may fairly be said to have held the situation was in a plastic state, changes in routes, in ownership of carriers, etc., bringing about a new situation fairly to be dated as contemporaneous with our report of December 31, 1915; and not necessarily implying unreasonableness of higher rates from the Virginia fields going back to October 15, 1911, as urged in the second supplemental petition in the matter of reparation in Docket No. 5504.

I am authorized to state that COMMISSIONER HALL concurs in the foregoing expression of dissent.

57 I. C. C.

EX PARTE NO. 73.

IN RE SECTION 3 OF THE INTERSTATE COMMERCE ACT, AS AMENDED BY SECTION 405 OF THE TRANSPORTATION ACT, 1920.

Submitted April 21, 1920. Decided June 4, 1920.

Rules and regulations for the prompt payment of transportation rates and charges prescribed.

Alfred P. Thom for Association of Railway Executives; *S. M. Adsit* for Virginian Railway Company; *James F. Fahnestock* for Pennsylvania Railroad Company; *Arthur B. Jones* for Chicago & North Western Railway Company; *J. L. Harris* for Chicago & Alton Railroad Company; *H. W. Meyers* and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company; *Wm. N. Neff* and *J. S. Livengood* for Southwestern Railroad Executives Association; *Edward L. Rossiter* for New York Central Railroad Company; *T. J. Smith* and *Francis B. James* for Campbells Creek Railway Company; and *Henry Thurtell* for Southern Railway.

R. C. Allen, *W. W. White*, and *S. E. Bool* for Lake Superior Iron Ore Association; *E. S. Ballard* for National Coal Association and Rubber Association of America; *A. E. Beck* for Merchants & Manufacturers Association of Baltimore; *Joseph H. Beek* for St. Paul Association of Public & Business Affairs; *Charles S. Belsterling* for Carnegie Steel Company, National Tube Company, American Sheet & Tin Plate Company, American Bridge Company, American Steel & Wire Company, Tennessee Coal & Iron Company, Lorain Steel Company, Illinois Steel Company, Universal Portland Cement Company, Oliver Iron Mining Company, H. C. Frick Coke Company, and others; *B. L. Benfer* for Benfer Company, National Macaroni Manufacturers Association, Foundry Supply Manufacturers Association, Cleveland Macaroni Company, Bishop & Babcock Company, Galion Iron Works & Manufacturing Company, and others; *J. S. Brown* for Board of Trade of the City of Chicago; *J. B. Campbell* for Spokane Merchants Association and Spokane Chamber of Commerce; *W. H. Chandler* for Boston Chamber of Commerce, Massachusetts Associated Industries, Massachusetts Chamber of Commerce, Arkwright Club, New England Traffic League, and Boston Wool Trade Association; *R. Cumming* for American Fruit & Vegetable Shippers Association; *Fayette B. Dow* for National Petroleum Association, Western Petroleum Refiners Association, Rochester Chamber of Commerce, National League of Commission Merchants of the United States, International Apple Shippers Asso-

ciation, and Western Fruit Jobbers Association of America; *G. M. Freer* for National Industrial Traffic League; *B. L. Glover* for Ash Grove Lime & Portland Cement Company; *Mr. Graham* for Southern Traffic League; *F. H. Harwood* for Illinois Coal Traffic Bureau; *C. B. Heinemann* for National Live Stock Exchange; *Percival Johnson* for Pulaski Iron Company; *Warren C. King* for Manufacturers Council of New Jersey; *B. A. Kozicke* for National Wholesale Grocers Association of the United States; *George C. Lucas* for Shippers Conference Committee of Greater New York and American Tobacco Company; *W. W. Manker* for Armour & Company and subsidiary companies; *D. O. Moore* for Chamber of Commerce of Pittsburgh; *Herman Mueller* for Milwaukee Association of Commerce, Sheboygan Association of Commerce, Cheese Shippers Traffic Association, Wisconsin Retail Lumbermen's Association, and others; *E. H. Porter* for Commercial Traffic Managers and Atlantic Refining Company; *R. W. Poteet* for New England Traffic League and Stanley Works; *J. T. Preston* for Association of Commerce of Roanoke, Va.; *R. D. Rhodehouse* for Youngstown Chamber of Commerce and Ohio State Industrial Traffic League; *George A. Schroeder* for Milwaukee Chamber of Commerce; *Wm. D. Smith* for Wm. Wrigley, jr., Company and Shippers Conference Committee of Greater New York; *Joseph N. Teal* for Pacific coast cities; *D. W. Thomas* for Virginia Iron, Coal & Coke Company; *Herbert Thompson* for Compressed Gas Manufacturers Association, Union Carbide Company, and National Carbon Company; *John I. Tierney* for Manufacturing Chemists Association of the United States; *George H. Tower* for Standard Oil Company of New Jersey; *Jonas Waffle* for Indiana Coal Operators; *Luther M. Walter* for Jones & Laughlin Steel Company and Morris & Company; *D. T. Waring* for Central Leather Company and Shippers Conference Committee of Greater New York; *George B. Webster* for Associated Cooperage Industries of America; *S. J. Wettrick* for Seattle Chamber of Commerce and Commercial Club; *J. W. White* for National Fertilizer Association; and *Nathan B. Williams* for National Association of Manufacturers.

T. B. Harrison for American Railway Express Company.

R. G. Hare for Prairie Pipe Line Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Section 3 of the interstate commerce act provides in paragraph (2) that:

From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to

time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia.

On March 30, 1920, we gave notice that we would hear shippers, carriers, and other parties interested in this subject previous to issuing the rules and regulations contemplated by the statute. At a hearing on April 20 and 21, 1920, we heard many shippers, certain organizations of shippers, and the principal carriers, concerning the rules and regulations which should be promulgated.

General Order No. 25, issued by the Director General of Railroads, among other things, provided:

Effective July 1, 1918 [subsequently changed to August 1, 1918], the collection of transportation charges, by carriers under Federal control, for services rendered, shall be on a cash basis, and, effective as of that date, credit accommodations then in existence which may be in conflict with the following regulations shall be cancelled.

In cases where the enforcement of this rule, with respect to freight, will retard prompt forwarding or delivery of the freight or the prompt release of equipment or station facilities, carriers will be permitted to extend credit for a period of not exceeding forty-eight (48) hours after receipt for shipment of a consignment if it be prepaid, or after delivery at destination if it be a collect consignment, provided the consignor if it be a prepaid consignment, or the consignee if it be collect, file a surety bond either individual or corporate, in an amount satisfactory to the Treasurer of the carrier.

Circular No. 9, dated June 29, 1918, issued by the director of public service and accounting, in the United States Railroad Administration, provided in part as follows:

While the carrier must protect itself in cases where such protection is necessary, it should also treat shippers or consignees in a business way. The majority of shippers or consignees in the past have paid their freight when they received their goods and that practice should be continued for the future. In many instances with regular customers there is no necessary connection between the delivery of freight and the presentation and payment of the freight bill; that is, the freight will be delivered to one person at one time and the bill presented to and collected from some other person at some other time. It is not the intent of this order to interrupt reasonable arrangements of that sort which do not involve the granting of a period of credit, but simply to put the transaction upon a cash basis.

Assume, for example, that freight is delivered to such regular customer on Monday and that the freight bill is mailed or delivered on the same day to the shipper or consignee being received by him in due course upon the morning of the next day. If, now, the shipper or consignee remits his check for the amount during Tuesday so that it may be received by the carrier the morning of Wednesday, that is to be treated as a cash transaction. The bill is presented and paid in due course of business and no period of credit in the ordinary acceptance of that term is given.

This might in fact allow one day for the examination and correction of the freight bill but that would not be the purpose of the transaction. In such case no bond will be required.

If in a particular case it is in the opinion of the carrier necessary or in the interest of economy that a period of two days in addition to the above prescribed should be allowed, this may be done upon the filing of the necessary bond. The check in this case should be mailed or payment made on Thursday.

The carriers have estimated that the enforcement of General Order No. 25 provides them with working capital of approximately \$75,000,000 which, if the customs and practices in the extension of credit to shippers in vogue prior to the enforcement of that order were restored, would generally be outstanding as unpaid transportation charges.

The carriers ask that the rules and regulations to be promulgated shall follow, as nearly as is practicable, the provisions of General Order No. 25 and the circular mentioned above. A large number of the shippers have joined in a request that the rules and regulations shall provide that in certain cases and upon surety bonds being furnished by the shippers, the carriers shall render freight bills daily, and periodical statements of the bills on the 7th, 14th, 21st, and last day of each month, and that the shippers shall pay the bills within three days after receiving the statements. The shippers and the carriers have acknowledged that a large proportion of the shippers do not need, and will not ask for, credit, and that such credit is necessary only in connection with forwarding or delivery for those whose shipments are extensive or in connection with shipments received or delivered by the carriers under circumstances hereinafter described. The maximum period of credit suggested by the carriers as proper and necessary is 96 hours, and the period asked by many of the shippers is that of weekly settlement as described above. A few of the shippers, including the Lake Superior Iron Ore Association, have asked that the rules and regulations which we promulgate shall permit carriers to resume the practices antedating General Order No. 25—that is, to extend long periods of credit to shippers—but as that practice is now clearly prohibited by the statute further consideration of such requests is unnecessary.

With but few exceptions the shippers have indicated that they do not expect credit for the purpose of financial accommodation in the amount of the transportation charges. The shippers ask that the rules and regulations which we promulgate shall provide for a short period of time between the delivery of the shipments or the rendering of the freight bills and the payment of the transportation charges, the following reasons being representative:

1. Several shippers have asserted that this brief extension of credit is necessary to enable them to audit the freight bills and cor-

rect erroneous applications of rates prior to payment of charges incorrectly computed by the carriers.

2. Both shippers and carriers requested that a reasonable time be granted for the computation of transportation charges, the presentation of freight bills, and the collection of charges on shipments, which, in accordance with custom and practice or tariff provisions, are collected upon destination elevator, cotton compress, official, certified, or other destination or outturn weights, the weighing being customarily done after the delivery of the shipments at destination.

3. Upon certain freight traffic, in accordance with tariff provisions for the computation of transportation charges at outturn weights or values ascertained by consignees, it is not customary for the carriers to make, or present to shippers, bills for the transportation charges until after the carriers have relinquished possession of the shipments at destination.

4. Many large shipping corporations are engaged in the operation of mines, the production of lumber, or production of raw materials, and other commodities in sparsely settled districts far removed from banking facilities, where the carriers and shipping corporations do not maintain, and can not reasonably be expected to maintain, office forces entrusted with funds for the settlement of transportation charges. A large tonnage of freight traffic is customarily shipped to and from the operations in such districts. An undue burden would be placed upon industry if rules and regulations should require financially responsible shippers, such as mining companies and other corporations, to station appropriate employees at each of their several mines or operations to pay transportation charges on shipments consigned to such operations. It is not always advisable to entrust or encumber those engaged in trucking freight for shippers with funds for the payment of transportation charges. The foregoing is a sufficient recital of the exigencies described at the hearing.

The carriers assert that the number of erroneous freight bills has not been large, and the rendering of incorrect freight bills is a temporary war-time condition, ascribable to the unusual labor turnover during the past four years, which will soon be remedied. Section 6 of the interstate commerce act provides that no carrier subject to the provisions of that act shall demand, collect, charge, or receive a greater or less or different compensation than is provided in the published tariffs. Section 3, paragraph (2), does not authorize carriers to extend credit to shippers in order that the shippers may have time to audit freight bills and thereby guard against claims for overcharges or undercharges subsequent to payment of the freight

bills. We expect the carriers to take action that will substantially reduce the number of erroneous freight bills rendered.

The following is quoted from the report to the House of Representatives of the Committee of Conference upon the Senate and House bills which became the "Transportation Act, 1920":

Section 405 provides that, after July 1, 1920, no railroad shall relinquish possession of freight at destination until all rates and charges thereon have been paid, except under such rules as the Commission may prescribe to assure prompt payment and prevent unjust discrimination. The latter provision virtually continues the operation of General Order No. 25 of the Railroad Administration, as supplemented, relating to the extension of credits by railroads.

The intention of Congress to require by statute the enforcement of the provisions of General Order No. 25, as supplemented, in so far as they may be reasonably applied, is thus manifest. Those provisions have been in force for 22 months and the business methods of the shippers and carriers have been adjusted to conform thereto. The rules and regulations which we promulgate should contemplate the collection of transportation charges prior to, or contemporaneous with, the delivery of most shipments, and, while adhering to the principle of prompt payment of charges, should, upon certain freight traffic, give opportunity for the preparation of freight bills at destination, weights to be ascertained after the carriers have relinquished possession of freight, and for the presentation of freight bills to the appropriate offices and employees of shippers by United States mail, by messenger, or by other proper means, and for payment of the charges in the regular course of business by the shippers. An order will be issued in accordance with these conclusions.

In the rules and regulations which we promulgate we will not undertake to deal with several matters which were covered by General Order No. 25. We will not prescribe rules for the collection of prepaid charges on shipments of freight, or for the collection of passenger fares or baggage charges, or for the form or character of surety bonds. We believe that our order will admit of the application to those matters of the provisions of General Order No. 25, as supplemented, or other appropriate rules to be formulated by the carriers, and that we should leave the carriers free to prescribe these and other details in the instructions which we expect that the carriers will issue for the guidance of their agents. We expect that carriers will refrain from granting undue extensions of credit that might arise from the transmission of freight bills, checks, drafts, and money orders through the mails to or from offices of shippers that are located at a considerable distance from the places where the carriers relinquish possession of the freight.

An appropriate order will be entered.

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ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of June, A. D. 1920.

Ex Parte No. 73.

In re Section 3 of the Interstate Commerce Act, as amended by Section 405 of the Transportation Act, 1920.

It appearing, That section 3, paragraph (2), of the interstate commerce act, as amended by section 405 of the transportation act, 1920, provides:

From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or, for any State or Territory or political subdivision thereof, or for the District of Columbia.

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the following rules and regulations be, and they are hereby, prescribed to become effective on July 1, 1920, and to remain in force until the further order of the Commission:

1. Where retention of possession of any freight by the carrier until the tariff rates and charges thereon have been paid will retard prompt delivery or will retard prompt release of equipment or station facilities, the carrier, upon taking precautions deemed by it to be sufficient to insure payment of the tariff charges within the period of credit herein specified, may relinquish possession of the freight in advance of payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay such charges, such persons being herein called shippers, for a period of ninety-six hours to be computed as follows:

(A) Where the freight bill is presented to the shipper prior to, or at the time of, delivery of the freight the ninety-six hours of credit

shall run from the first 4.00 p. m., following the delivery of the freight.

(B) Where the freight bill is presented to the shipper subsequent to the time the freight is delivered the ninety-six hours of credit shall run from the first 4.00 p. m., following the presentation of the freight bill.

2. Every such carrier shall present freight bills to shippers not later than the first 4 p. m. following delivery of the freight, except that when information sufficient to enable the carrier to compute the tariff charges is not then available to the carrier at the delivery point, the freight bills shall be presented not later than the first 4 p. m., following the day upon which sufficient information becomes available to the delivering agent of the carrier.

3. Shippers may elect to have their freight bills presented by means of the United States mails, and when the mail service is so used the time of mailing by the carrier shall be deemed to be the time of presentation of the bills. In case of dispute as to the time of mailing the postmark shall be accepted as showing such time.

4. Sundays and legal holidays, other than Saturday half holidays, may be excluded from the computation of the period of credit.

5. The mailing by the shipper of valid checks, drafts, or money orders which are satisfactory to the carrier in payment of the tariff charges, within the period of credit prescribed above, may be deemed to be payment of the tariff charges within the period of ninety-six hours of credit. In case of dispute as to the time of mailing the postmark shall be accepted as showing such time.

No. 10274.

WADHAMS OIL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted October 16, 1919. Decided May 21, 1920.

1. Rates on refined petroleum products in tank-car loads from points in Kansas and Oklahoma to Milwaukee and Racine, Wis., found unjust and unreasonable to the extent that they may exceed by more than 3 cents per 100 pounds the rates on like traffic contemporaneously in effect from the same points to Chicago, Ill.
2. Rates on heavy oils in tank-car loads from said points to Milwaukee and Racine found unjust and unreasonable to the extent that they may exceed 5 cents less than rates on refined oils to the same points.
3. Rates on heavy oils from said points to Milwaukee and Racine from March 1, 1916, to June 24, 1918, found to have been unreasonable to the extent that they exceeded 25 cents per 100 pounds. Reparation awarded on shipments of heavy oils during that period.

John A. Ronan, Nuel D. Belnap, John S. Burchmore, and Luther M. Walter for complainants.

F. M. Elkinton for certain Milwaukee and Racine interveners.

Clifford Thorne and Walter R. Scott for other interveners.

T. J. Norton and J. L. Coleman for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner.

In this proceeding a proposed report of the examiner was served upon the parties. Exceptions thereto were filed by complainants and interveners.

The complainants are Wadhams Oil Company, Milwaukee Gas Light Company, John Obenberger Forge Company, and Ladish Drop Forge Company, corporations engaged in business at or near Milwaukee, Wis. By complaint filed June 10, 1918, as amended, they and interveners allege that the rates on petroleum products in tank-car loads from certain points in Oklahoma and Kansas to Milwaukee, its suburbs, and Racine, Wis., are (1) unjust and unreasonable as compared with the rates on like traffic to Chicago, and (2) unduly prejudicial as compared with the rates on like traffic from Whiting, Ind., Wood River, Ill., Casper, Wyo., and points in Louisiana and

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Texas to Milwaukee. They seek reparation and the establishment of reasonable and nonprejudicial rates for the future.

Petitions of intervention were received on behalf of the Bartles-Maguire Oil Company, Delaney Oil Company (now Lindsay-Mac-Millan Company), and National Brake & Electric Company, corporations at Milwaukee; Belle City Malleable Iron Company, Harvey Spring & Forge Company, Mitchels Motor Company, and Lockwood Oil Company, corporations at Racine, Wis., and on behalf of members of the American Petroleum League and Western Petroleum Refiners Association. The complainants and interveners will be referred to herein as complainants.

The territory of origin, embracing the oil-refining points in Kansas, such as Coffeyville, and in Oklahoma, such as Tulsa, designated as groups 2 and 3, respectively, is a part of the midcontinent oil field and will be referred to herein as the midcontinent group. Prior to June 25, 1918, the rates from the midcontinent group on refined oils, such as gasoline and kerosene, in tank-car loads, were 30 cents per 100 pounds to Milwaukee and 25 cents to Chicago, rates being expressed alike throughout this report; and on heavy oils such as fuel oil, the rates were 25.3 cents to Milwaukee and 20 cents over certain routes and 25 cents over others to Chicago. Those rates with the exception of the rate on fuel oil to Milwaukee, and the 25-cent rate on heavy oils via certain routes to Chicago, were found reasonable in *Midcontinent Oil Rates*, 36 I. C. C., 109, 120, 121, and 128, decided August 13, 1915.

On June 25, 1918, the rates were increased 25 per cent under authority of the Director General's Order No. 28, and on July 25, 1918, by modification of that order, the increases were canceled and a specific increase of 4.5 cents was substituted therefor.

The rates to Racine were and are the same as to Milwaukee.

The complainants' principal contentions are that the rates to Milwaukee should not exceed the rates to Chicago; and if that contention is not upheld, that the rates to Milwaukee should not exceed by more than 2.5 cents the rates to Chicago.

In support of the first contention they show that class and commodity rates to Chicago are generally applied also to Milwaukee on long-haul traffic from the west and southwest, and from trunk line territory. They list a number of low-grade commodities on which the rates from Coffeyville, Kans., to Chicago and Milwaukee are the same; and other low-grade commodities, which move in tank cars, on which the rates from Kansas City, Mo., to Chicago and Milwaukee are the same. They further show that fifth-class rates from practically the entire southwest territory, including the midcontinent oil fields, are the same to Chicago and Milwaukee;

and that this is true of the rates on lumber from Muskogee, Okla., and Stamps, Ark. They state that no justification has been offered for continuing a different competitive situation between Chicago and Milwaukee with respect to oil rates than exists with respect to scores of other commodities.

In support of their second contention they show that the present differential of 5 cents is a departure from the principle that differentials should decrease as the length of the hauls increase; and from the principle that average rates per ton-mile normally decrease as the lengths of the hauls increase. For example, the rate on refined oil in tank-car loads from Kansas City, Mo., to Milwaukee is only 3 cents higher than to Chicago for the additional distance of about 71 miles; from trunk line territory and from Casper, Wyo., the rates are the same to both points; from central territory, for shorter average hauls, the rates to Milwaukee are generally but 2 cents higher than from the same points to Chicago; and from New Orleans, La., and Fort Worth, Tex., Milwaukee's differential over Chicago is 3 cents for additional distances of about 85 and 71 miles, respectively.

From the midcontinent group to Peoria, Ill., the rates on refined oil are 2.5 cents higher than to St. Louis, Mo., and the distance from St. Louis to Peoria is 162.1 miles; to Chicago the rates are 2.5 cents higher than to Peoria, and the distance from Peoria to Chicago is 153 miles; to Milwaukee the rates are 5 cents higher than to Chicago, and the distance from Chicago to Milwaukee is 85 miles; the same differential applies to Racine, which is 61.9 miles from Chicago; the rates to Fond du Lac, Wis., are 2 cents higher than to Milwaukee, and the distance from Milwaukee to Fond du Lac is 62.5 miles. It is apparent that the differential of 5 cents, Milwaukee and Racine over Chicago, for 85 and 61.9 miles, respectively, is out of line as compared with the differential of 2.5 cents, Peoria over St. Louis, 162.1 miles; 2.5 cents Chicago over Peoria, 153 miles; and 2 cents Fond du Lac over Milwaukee, for 62.5 miles.

The differentials explained above are shown in the following table:

Differential.		Distances between destina- tions.	From—
Milwaukee over Chicago.....	Cents. 3		
Do.....	0	Miles. 85	{ Kansas City, New Orleans, and Fort Worth.
Do.....	2		{ Trunk line territory and Casper, Wyo.
Do.....	5		{ Central territory.
Racine over Chicago.....	5	61.9	{ Midcontinent group.
St. Louis under Chicago.....	5	263.9	Do.
Peoria under Chicago.....	2.5	153	Do.
Peoria over St. Louis.....	2.5	162.1	Do.
Fond du Lac over Milwaukee.....	2	62.5	Do.

If the average short-line distances from the midcontinent group to these destinations were used to show differences in distance instead of the distances between the destinations as stated above, the proportions would not be materially different. It will be noted in the following table that the average distances from the Oklahoma and Kansas groups to Milwaukee are only 72 and 60 miles, respectively, greater than to Chicago. This table shows that, based on the average distances stated in the *Midcontinent Case, supra*, and the present rates from the Kansas and Oklahoma groups, the earnings per ton-mile and per car-mile, based upon 10,000 gallons, or 66,000 pounds, are higher to Milwaukee than to Chicago, although the distance to Milwaukee is greater.

From—	To—	Average distance.	Refined oil.		
			Rate.	Per ton-mile.	Per car-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Kansas group.....	Milwaukee.....	666	34.5	10.36	34.2
Do.....	Chicago.....	606	29.5	9.73	32.1
Oklahoma group.....	Milwaukee.....	776	34.5	8.89	29.3
Do.....	Chicago.....	704	29.5	8.38	27.7

The average distances shown in the table are those to Chicago and Milwaukee only, and not to the Chicago and Milwaukee groups. The Milwaukee group on refined oil extends west from Milwaukee to include Beloit, Madison, Portage, Prairie du Chien, and La Crosse, in Wisconsin, and Winona, in Minnesota. The Chicago group on refined oil begins just south of Evanston in Illinois, includes Indiana Harbor, Griffith, and Hammond, Ind., does not include Peoria or Springfield, Ill., and extends southwest in a narrowing wedge in Illinois to a point just east of East St. Louis. The complainants contend that Chicago and Milwaukee are comparable not only as individual destinations, but also as remote points in their respective groups. Chicago is the farthest distant point in its group, and Milwaukee is the most distant important point in its group, with the exception of Winona, which is only about 8 miles farther from the midcontinent field than Milwaukee. The short lines to Madison and La Crosse, representative points in the Milwaukee group, as well as to Milwaukee, do not run through Chicago, and the distances to Madison and La Crosse are about 24 and 14 miles, respectively, less than to Milwaukee from either Tulsa or Coffeyville.

Based upon the earnings per ton-mile under the present rate from the Oklahoma group to Chicago, the equivalent rate to Milwaukee

would be 32.5 cents, or 3 cents higher than to Chicago. Based upon the rate on refined oil prior to June 25, 1918, or on fuel oil after that date, to Chicago, except by certain routes, and equivalent earnings per ton-mile, the resulting differential would have been 2.5 cents. The complainants state that by decreasing the ton-mile yield with the added distance over Chicago in the same ratio as it decreases with the added distance to Chicago over St. Louis, the rate from the Oklahoma group to Milwaukee on refined oil would be 30.7 cents, as compared with the present rate of 29.5 cents to Chicago, and the resulting differential would be 1.2 cents. It is apparent that in the absence of unusual conditions which would warrant a departure from the normal basis of rate making the rates on petroleum products from the midcontinent group to Milwaukee should not be 5 cents higher than the rates to Chicago.

Testimony was offered to prove that the shippers of oil lose money upon the tank cars which they are required to furnish, and that loss and damage claims on petroleum products are relatively light.

The testimony with respect to the issue of undue prejudice dealt principally with a showing of competition between Milwaukee and Chicago in the distribution of oil products; and with a showing that the so-called independent petroleum dealers compete with the Standard Oil Company, which receives crude oil by pipe line from the midcontinent field into Whiting, Ind., Wood River and Lockport, Ill., and ships the products by rail to Milwaukee at combined charges less than the all-rail rates.

Defendants rely principally upon the fact that the rates to Milwaukee were reduced and fixed by the *Midcontinent Oil Case*; and they contend that the record in this proceeding shows no situation differing from that presented in the former case. They refer to our statement in that report at pages 119, 120, that "there are few groups with respect to other commodities that may be compared in extent with the group from which we have found the reasonable rate to St. Louis and other Mississippi crossings" on refined oil; and that to extend the Chicago rate to Milwaukee by applying the usual fifth-class differential of 5 cents over St. Louis to "oil traffic from the midcontinent field would result in unreasonably low rates, and a departure from the usual application of differentials [i. e., 5 cents on fifth class over St. Louis] is therefore justified." They do not contend that the rule of *stare decisis* should control our decision in this proceeding, but they do contend that we can not award reparation in this case below the basis of rates which were established in obedience to our directions in the *Midcontinent Oil Case*; and that in so far as the claim depends upon rates initiated under

authority of the President we have no authority under the federal control act to award reparation on shipments moving during the period of federal control.

At the time of the decision in the case cited the rate to Milwaukee also applied to "points in Wisconsin south of the line of the Green Bay & Western Railroad." With the publication of rates under our decision the Milwaukee group was restricted and the group rate now applies to points in Wisconsin on and south of the line of the Chicago, Milwaukee & St. Paul Railway from Milwaukee through Portage to La Crosse, and the rate to other points in the old Milwaukee group are made 2 cents higher than to Milwaukee.

In *Winona Oil Co. v. Director General*, 57 I. C. C., 152, we found that a rate of 40.5 cents from the midcontinent group to Eau Claire, Chippewa Falls, and Menomonie, Wis., had not been shown to be unreasonable. These points are near the southern edge of a group which also includes Duluth, Minn., Ashland and Marinette, Wis.

With the exception of rates on heavy oils for the period hereinafter referred to, rates to Milwaukee and Racine have been maintained in conformity with our findings in *Midcontinent Oil Rates*. We therefore can not find that they were unreasonable. On a different record dealing with rates to these points, we now find it necessary to revise our former conclusion in this respect.

We are of the opinion and find that the rates assailed on refined petroleum products are and for the future will be unjust and unreasonable to the extent that they exceed or may exceed by more than 8 cents per 100 pounds the rates on like traffic contemporaneously in effect from the same points to Chicago.

In *Midcontinent Oil Rates* we found that a reasonable rate for low-grade oils, including fuel oil, to Chicago would be 5 cents less than that fixed for the transportation of refined oil. In *Kansas City Refining Co. v. Director General*, 57 I. C. C., 197, we prescribed from Kansas City to Chicago a rate on fuel oil not in excess of 5 cents lower than the rate contemporaneously applied on refined oil from and to the same points.

We are further of the opinion and find that the rates assailed on petroleum products designated as heavy oils are and for the future will be unjust and unreasonable to the extent that they exceed or may exceed rates 5 cents lower than the rate contemporaneously maintained on refined oil between the same points.

Complainants urge that in certain instances and via certain routes the through rates on fuel oil from the midcontinent field to Milwaukee exceeded the aggregate of the intermediate rates. To the extent that such situations have been found to exist relief is embraced in other findings.

In *Midcontinent Oil Rates, supra*, we found that a rate of 20 cents on heavy oils from the midcontinent field to Chicago would be a reasonable maximum rate for the future. Some of the carriers established this rate, but others did not. In the same case, at page 129, we also said:

What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points, although not specifically referred to in this proceeding.

With a differential in rates on refined oil from this field of 5 cents higher to Milwaukee than to Chicago, prescribed in that case, it can not properly be contended that any greater differential would have been reasonable for application in connection with the lower rates on heavy oils. Nevertheless the through rate to Milwaukee and Racine remained 30 cents, or 10 cents higher than to Chicago, and higher than the combination of rates to and from Chicago, until July 15, 1916, when it was reduced to 25.3 cents. This rate remained in effect until June 24, 1918, when it was increased under General Order No. 28.

We further find that from March 1, 1916, to June 24, 1918, inclusive, the rate on heavy oils from the midcontinent field to Milwaukee and Racine was unreasonable to the extent that it exceeded 25 cents. We further find that on shipments of heavy oils between these dates, complainants Wadhams Oil Company, Milwaukee Gas Light Company, National Brake & Electric Company, Bartles-Maguire Oil Company, Lindsay-MacMillan Company, successor to Delaney Oil Company, and Harvey Spring & Forge Company paid and bore the freight charges and have been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable, and are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

Except as to shipments of heavy oils described, reparation is denied.

An appropriate order for the future will be entered.

HALL, *Commissioner*, dissenting:

To my mind the relation of the several destination groups to the large producing midcontinent group of refineries should not be disturbed by picking out Chicago from one, Milwaukee and Racine from another, and fixing a spread of 3 cents between the former and the two latter localities, unless and until we shall have had opportunity and occasion to reconsider the main features of the adjustment ultimately put into effect under *Midcontinent Oil Rates*, 36 I. C. C., 109, with a view to readjusting groupings, and not rates to specific localities.

57 I. C. C.

When that adjustment was made the average distances from the midcontinent field were found to be:

	Cents.
To St. Louis, 412 miles; maximum rate prescribed.....	20
To Chicago territory, 620 miles; maximum rate prescribed.....	25
To Milwaukee, 719 miles; maximum rate prescribed.....	30

Until that adjustment was made the rate of 27 cents in effect to Chicago applied also to points in a restricted territory south and west thereof for a distance of about 90 miles, but such points as East Chicago and Gary took rates 5 cents higher than Chicago. Under that adjustment Chicago territory was enlarged so as to take in these higher-rated points as far east as Whiting, and stretched down almost to the gates of St. Louis.

The order in this case can be satisfied either by increasing the Chicago rate or by reducing the Milwaukee and Racine rate. In either event, other points now taking the Chicago rate, or the Milwaukee rate, will not be directly affected by the order, although the requirements of the fourth section will necessitate various changes. Whatever is done under the order will almost certainly bring complaints from related groups because of disturbance of the relation effected in the adjustment under *Midcontinent Oil Rates*.

My feeling amounts to conviction that until we have an ampler record we should leave in effect the existing grouping adjustment which has for four years proved fairly satisfactory as compared with the previous rate incongruities which, as stated in the opening sentence of the report in the case cited, "have been a prolific source of complaint."

I am authorized by Commissioners DANIELS and ARCHISON to say that they join in this dissenting expression.

57 I. C. C.

No. 10622.

MOBILE CHAMBER OF COMMERCE & BUSINESS LEAGUE
ET AL.

v.

DIRECTOR GENERAL, AS AGENT, AND LOUISVILLE &
NASHVILLE RAILROAD COMPANY.

Submitted March 10, 1920. Decided May 22, 1920.

Rate of 28.5 cents per 100 pounds on sugar in carloads, from New Orleans, La., to Mobile, Ala., found unreasonable to the extent that it exceeded or may exceed 21.5 cents. Reparation denied for want of proof.

R. G. Cobb for complainants.

J. F. Abbott for American Sugar Refining Company, intervener.

William Burger and *N. W. Proctor* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

MEYER, Commissioner:

This case was made the subject of a proposed report which was served on the parties. Exceptions were filed by defendants and oral argument had.

In this proceeding the Mobile Chamber of Commerce & Business League and certain wholesale dealers in sugar at Mobile, Ala., allege that the carload rate on sugar from New Orleans, La., to Mobile, of 28.5 cents, made effective April 1, 1919, was and is unreasonable. Complainants seek reparation and the establishment of a reasonable rate for the future. All rates are hereinafter stated in cents per 100 pounds.

The American Sugar Refining Company intervened on behalf of complainants, and especially objects to the maintenance of the same rate on carloads and less than carloads.

Mobile is a jobbing city of considerable importance with a population of approximately 80,000 people. Aside from the requirements for local consumption, appreciable quantities of sugar are distributed in the surrounding territory by dealers at Mobile. Under the present rate, it is asserted, the jobbing of sugar has been greatly curtailed, but undue prejudice is not alleged.

For many years prior to June 25, 1918, the rate on sugar in carloads from New Orleans to Mobile was 12 cents. On that date it was increased to 15 cents, under General Order No. 28 of the Director General of Railroads, and on April 1, 1919, further increased to 26.5 cents, which is the same as the rate applied on less-than-carload quantities.

In *Rates on Sugar*, 31 I. C. C., 495, which was a fourth section proceeding involving rates on sugar from New Orleans to Ohio and Mississippi river crossings and points in the southeast, we found that the rate of 12 cents from New Orleans to Mobile was depressed by water competition and permitted the continuance of higher rates to intermediate points not in excess of 15 cents. In *Southeastern Sugar Cases*, 48 I. C. C., 739, we found that the rates on sugar as revised were on the whole reasonably low. Complainants contend that the rate established therefore exceeds what we found to be reasonable in those proceedings, as increased under General Order No. 28.

In southern classification sugar is rated fifth class, any quantity, and the increase on April 1, 1919, made the carload rate the same as the fifth-class rate, although sugar, in carloads, rarely moves on class rates from New Orleans. It is shown by complainants that rates on sugar, in carloads, from New Orleans to Montgomery, Ala., are 62 per cent; Birmingham, Ala., 52 per cent; Decatur, Ala., Chattanooga, Tenn., and Atlanta, Ga., 50 per cent of the contemporaneous fifth-class rates.

While the 26.5-cent rate to Mobile applies to both carload and less-than-carload shipments, in the one tariff publishing rates from New Orleans carload rates to 14,071 points are lower than the less-than-carload rates, and to 105 points the same. It is asserted that less-than-carload rates to points in the southeast average 40.3 per cent greater than the carload rates. On this basis, assuming the present rate to be reasonable for less-than-carload shipments, complainants urge that the carload rate should be 18.8 cents. To Montgomery and Birmingham the carload rate is 31 per cent less than the less-than-carload rate; to Decatur, Atlanta, and Augusta, Ga., 33 per cent less; and to Jacksonville, Fla., 32 per cent less.

The distance from New Orleans to Mobile is 140 miles. Under the present rate of 26.5 cents the revenue per ton per mile is 37.9 mills, and the revenue per car-mile at the prescribed minimum of 33,000 pounds is 62.9 cents. Shipments made by the American Sugar Refining Company are said to average approximately 43,000 pounds, upon which the car-mile revenue would be 81.97 cents. With this showing carload rates from New Orleans to other jobbing points are contrasted, and notwithstanding the greater distances complainants

rely on the comparison as demonstrating the rate to Mobile to be excessive. Some representative instances are as follows:

New Orleans to—	Miles.	Rate.	Revenue per ton-mile.	Revenue per car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Mobile.....	140	26.5	37.9	62.9
Montgomery.....	318	32	20.13	33.2
Mobile.....	311	32	20.53	34
Birmingham.....	355	32	18.03	29.7
Decatur.....	442	35	15.94	26.1
Atlanta.....	493	35	14.20	23.4
Augusta.....	638	35	10.54	17.4

Complainants also refer to rates from New Orleans to points in Louisiana west of the Mississippi River, involving transfer across the river, and they assert that the transportation conditions are similar to those on the line to Mobile. The rate to Abbeville, La., 149 miles, and to Lake Arthur, La., 248 miles, is 21.5 cents, and to Bayou Sara, 107 miles, the rate is 25 cents. Defendants refer to carload rates to points between Gibson and New Iberia, La., for distances of from 67.5 to 126.8 miles, of 25 cents, and to points between Cade and Crowley, La., for distances of from 134 to 167.7 miles, of 29 cents. These rates, however, are proportional rates, and the local rate from New Orleans is 21.5 cents.

Comparison is made by complainants and intervener of the rates on sugar from New Orleans to Mobile with rates on other commodities, which it is asserted move under no more favorable transportation conditions, and some of which are of greater value than sugar, between the same points, as shown in the following table:

Commodity.	Minimum weight.	Rate.	Revenue per ton-mile.	Revenue per car-mile.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Sugar.....	33,000	26.5	37.9	62.9
Starch.....	40,000	20	28.7	57.6
Coffee.....	Any quantity.	19	27.3	.....
Flour.....	Any quantity.	15.5	22.3	.....
Lard.....	24,000	12.5	18	21.6
Molasses.....	36,000	16.5	23.7	42.7
Rice.....	30,000	15	21.6	32.4
Salt.....	30,000	9	13	19.4
Dried beans.....	36,000	20	26.7	51.8
Soda.....	30,000	16.5	23.7	35.6
Biscuits, crackers, and cakes.....	20,000	26.5	38.1	38.1
Canned goods.....	36,000	27.5	39.6	71.2
Grain and grain products.....	30,000-40,000	12.5	18	27-36

To other important cities in the southeast complainants show that the rates on sugar are but slightly higher and in some instances the same as or lower than the rates on rice and molasses, while to Mobile, the rate on sugar is 11.5 cents higher than the rate on rice and 10 cents higher than the rate on molasses.

The intervener urges that it is detrimentally affected by the maintenance of the same rate on carload and less-than-carload quantities, inasmuch as this basis permits dealers at New Orleans to job sugar in Mobile and adjacent territory, displacing to a great extent carload movements from New Orleans.

Defendants state that the rate from New Orleans to Mobile was formerly depressed by water competition; that in the revision of April 1, 1919, water competition was disregarded and the rate to Mobile applied as a maximum at intermediate points; that the fifth-class rate is depressed by water competition, and that therefore the relation of the rate on sugar to the fifth-class rate should not be the same as such relationship to other points where the class rates are on a more normal basis. They further assert that in making the less-than-carload rate the fifth-class rate was observed as maximum, and that but for the fact that such rate is depressed the less-than-carload rate would be higher than the present rate of 26.5 cents. Fifth-class rates from New Orleans to points intermediate to Mobile grade up to a maximum of 41.5 cents. It is also claimed by defendants that while the rate on sugar has been revised without regard to water competition, rates on other commodities have not, and higher rates are maintained at intermediate points.

The rate of 26.5 cents is blanketed from Kreole, Miss., to and including Mobile, for distances of from 104 to 140 miles from New Orleans. Defendants compare these rates with rates from 0.5 cent to 2.5 cents higher for similar distances from New Orleans to points on other lines leading from New Orleans. These rates, except those to points on the Gulf & Ship Island Railroad, were advanced at the same time with those to Mobile, and justification by virtue of this comparison necessarily presupposes the propriety of such rates.

From points in Michigan shipments of beet sugar destined to the southeast move through Cincinnati, Ohio; Louisville, Ky.; and Evansville, Ind.; and for distances approximating that from New Orleans to Mobile the rates are higher than that under complaint.

Defendants urge that the road between New Orleans and Mobile is the most expensive division on that entire line to operate; that it traverses a swampy territory where frequent washouts are occasioned by storms; and that a substantial portion of the roadway consists of bridges, of which there are 11 over 200 feet in length.

Under General Order No. 28 the rate from New Orleans to St. Louis and Louisville was increased from 18.3 cents to 44.5 cents and that to Cincinnati from 19.8 cents to 46 cents, afterwards reduced to 45 cents. The prior rates, as well as rates to Memphis, Tenn., and lower Mississippi River points, had been depressed by water competition. Rates to the latter points were increased 25 per cent, and

on April 1, 1919, such further increases were made as defendants believed would properly adjust them to the rates to St. Louis, Cincinnati, and Louisville. Rates to interior points previously influenced to some extent by those to the river points were also advanced on that date.

Disregarding water competition, which now influences the rates to a much less extent than previously, if at all, there is unquestionably justification for an increase in the rate to Mobile, which had been depressed to permit competition with boats operating on the Gulf of Mexico from New Orleans.

While in permitting the continuance of the 12-cent rate to Mobile we provided that the rates to intermediate points should not exceed 15 cents, that can not be considered as a finding that 15 cents was the maximum reasonable rate when considered apart from the depressed rate to Mobile. On the other hand, the defendants have not justified the full amount of the increase in the rate on April 1, 1919.

Upon consideration of the whole record, we are of the opinion and find that the rate on sugar, in carloads, from New Orleans to Mobile, was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed 21.5 cents per 100 pounds.

The complaint asks for reparation on shipments which have moved, but no evidence as to such shipments or the payment of freight charges was introduced, and reparation will not therefore be awarded.

An appropriate order will be entered.

57 L. C. C.

No. 10542.

CHAMBER OF COMMERCE OF MONTGOMERY, ALA.,
ET AL.

v.

DIRECTOR GENERAL, LOUISVILLE & NASHVILLE
RAILROAD COMPANY, ET AL.

Submitted March 10, 1920. Decided, May 22, 1920.

1. Rate of 32 cents per 100 pounds on sugar, in carloads, from New Orleans, La., to Montgomery, Ala., found to have been and to be unreasonable to the extent that it exceeded and exceeds 29 cents.
2. Rate of 34 cents per 100 pounds on sugar, in carloads, from Savannah, Ga., to Montgomery, Ala., found to have been and to be unreasonable to the extent that it exceeded and exceeds 31 cents.
3. Reparation awarded.

Charles E. Cotterill, M. M. Caskie, Bernard Lobman, and E. B. Gaines for complainants.

J. F. Abbott for American Sugar Refining Company; *O. R. Hill-
yer* for Savannah Sugar Refining Corporation; *Edgar Moulton* for
New Orleans Joint Traffic Bureau; *O. L. Bunn* for Birmingham
Traffic Bureau; *Harrison Jones* for Atlanta Freight Bureau; *M. M.
Emmert and Candler, Thompson & Hirsch* for Coca-Cola Company;
Morgan Richards for Chamber of Commerce of Selma, Ala., and
Selma Wholesale Grocers' Association; and *T. D. Sale* for Chero-
Cola Company and Columbus Chamber of Commerce, interveners.

J. Prince Webster for Railroad Commission of Georgia.

N. W. Proctor for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

MEYER, *Commissioner*:

This case was made the subject of a proposed report which was served on the parties. Exceptions were filed and oral argument had.

The Chamber of Commerce of Montgomery, Ala., and certain corporations and firms of that city dealing in sugar, complain that the carload rates on sugar from New Orleans, La., and Savannah, Ga., to Montgomery have been since April 1, 1919, and are unreasonable, unduly prejudicial to complainants, and unduly pref-

erential of sugar dealers and users at Birmingham and Eufaula, Ala., Chattanooga and Nashville, Tenn., and Atlanta, Columbus, La Grange, Macon, and West Point, Ga. They seek the establishment of reasonable and nonprejudicial rates for the future and reparation on all shipments made since April 1, 1919.

Petitions of intervention on behalf of complainants were filed by the American Sugar Refining Company, New Orleans Joint Traffic Bureau, Chamber of Commerce of Selma, Ala., and Selma Wholesale Grocers' Association. The Savannah Sugar Refining Corporation, Atlanta Freight Bureau, the Coca-Cola Company, and the Chero-Cola Company intervened in support of the complaint in so far as it attacks the reasonableness of the rates from New Orleans and Savannah to Montgomery, but maintain that any undue prejudice to Montgomery or preference of points in Georgia in rates from Savannah results from the unreasonableness of the rate to Montgomery. The Birmingham Traffic Bureau intervened to protect the interests of that city.

Montgomery is an important jobbing center and large quantities of sugar are received there for local consumption and for distribution throughout the adjacent territory. It is 318 miles northeast of New Orleans via the short line of the Louisville & Nashville Railroad. The short-line distance of the Seaboard Air Line Railway from Savannah to Montgomery is 338 miles; that of the Atlantic Coast Line Railroad 410 miles, and that of the Central of Georgia Railway 386 miles. All rates will be hereinafter stated in cents per 100 pounds.

Prior to June 1, 1915, the rate from New Orleans to Montgomery was 17 cents. On that date it was increased to 21 cents; on June 25, 1918, to 26.5 cents, pursuant to General Order No. 28 of the Director General of Railroads, and on April 1, 1919, to 82 cents, the rate now in effect and under complaint. Complainants do not assert that the rate as advanced on June 25, 1918, was unreasonable, the object of this complaint being to have restored the rate of 26.5 cents in force prior to April 1, 1919.

The present adjustment of rates on sugar from New Orleans to points in the southeast is the result of several revisions. Many years ago low rates were established on sugar from New Orleans to Ohio and Mississippi river crossings and Nashville, Tenn., to meet water competition of boat lines, and market competition from the east. These rates were to some extent reflected by low rates to certain interior points, and higher rates were maintained to intermediate points.

Prior to our decision in *Rates on Sugar*, 31 I. C. C., 495, which was a proceeding under the fourth section, the rates on sugar, in carloads, 57 I. C. C.

from New Orleans were 17 cents to Montgomery, Birmingham, Nashville, Cairo, Ill., St. Louis, Mo., and Louisville, Ky., and 18.5 cents to Cincinnati. These rates were depressed by water competition and were exceeded at intermediate points. In that case we authorized the carriers to continue the rates to the river crossings and Nashville, and to maintain higher rates to intermediate points, subject to maximum rates prescribed therein. The carriers proposed to apply a rate of 20 cents to Montgomery, the same as the rate prescribed for application at intermediate points via indirect routes for similar distances, and as this rate yielded 12 mills per ton-mile, authority to maintain higher rates at intermediate points was denied.

In *Sugar Rates from New Orleans*, 32 I. C. C., 606, we authorized rates to intermediate points not exceeding 21.5 cents to Montgomery and Birmingham and points intermediate thereto, 25 cents to points south of the southern boundary of Tennessee, and 28 cents to points north thereof.

The carriers established a rate of 21 cents to Montgomery and Birmingham and this rate, increased 25 per cent to 26.5 cents under General Order No. 28, it is urged by complainants is the rate to Montgomery found by us as the maximum reasonable rate.

Under General Order No. 28 commodity rates on sugar from eastern points to points in central territory, including St. Louis, Louisville, Cincinnati, and Chicago, were increased to the fifth-class basis, and the rate from New Orleans to St. Louis and Louisville was made 44.5 cents and that to Cincinnati 46 cents, afterwards reduced to 45 cents, disregarding water competition. All other rates from New Orleans were increased 25 per cent. Rates to points in the southeast, such as Nashville and Chattanooga, had previously been related to the rates to the river crossings, and the readjustment of rates to the crossings was followed, on April 1, 1919, by a revision of rates to such points.

The following table shows the rates on various dates and the distances from New Orleans to representative points:

To—	Distance.	Prior to June 1, 1915.	June 24, 1918.	June 25, 1918.	Present rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
St. Louis, Mo.....	707	17	18.3	44.5	44.5
Louisville, Ky.....	776	17	18.3	44.5	44.5
Cincinnati, Ohio.....	836	18.5	19.8	46	45
Nashville, Tenn.....	595	17	18.3	23	41.5
Chattanooga, Tenn.....	498	20	24	30	35
Atlanta, Ga.....	493				
Columbus, Ga.....	414	23	28	35	35
Eufaula, Ala.....	399				
Birmingham, Ala.....	355	17	21	26.5	32
Montgomery, Ala.....	318	17	21	26.5	32

The 32-cent rate to Montgomery applies from New Orleans to all stations on the Louisville & Nashville north of Mobile to and including Birmingham, and also to stations on the Southern Railway and the Alabama Great Southern Railroad between Meridian, Miss., and Birmingham, and to all points in Mississippi north of the Alabama & Vicksburg Railway to and including points on the Southern Railway from Greenville to Columbus. The 35-cent rate applicable to Atlanta and Chattanooga is applied at all points east of Montgomery and Birmingham to and including Columbus and Macon, Ga., and to points in Alabama and eastern Mississippi north and east of Birmingham to and including the line of the Southern Railway from Memphis through Decatur to Chattanooga.

On April 1, 1919, no increase was made in the rates from New Orleans to Atlanta and other Georgia points corresponding to that to Montgomery, and while prior to June 25, 1918, the rate to Atlanta was 7 cents higher than to Montgomery and subsequent thereto 8.5 cents higher, the present rate to Atlanta, is but 3 cents higher than that to Montgomery.

Sugar is rated fifth class, any quantity, in the southern classification, but the preponderance of the movement in carloads is on commodity rates. The fifth-class rate from New Orleans to Montgomery is 51.5 cents, to Birmingham 61.5 cents, and to Chattanooga and Atlanta 70 cents. Complainants compare this relationship with that on sugar and urge that the rates on sugar are not properly aligned, and that this is further shown by the fact that prior to the increase of April 1, 1919, the rate on sugar to Montgomery was 52 per cent of the fifth-class rate and is now 62 per cent, while to Birmingham the rate on sugar is 52 per cent and to Chattanooga and Atlanta 50 per cent of the fifth-class rates.

It is also shown by complainants that while rates on various commodities are from 4 to 11.5 cents lower to Montgomery than to Birmingham, the rate on sugar is the same, and that on these commodities the rates to Atlanta, Chattanooga, Columbus, and Macon exceed the rates to Montgomery by a much greater amount than do the rates on sugar.

There was no increase on April 1, 1919, in the less-than-carload rates from New Orleans to Montgomery and the surrounding territory corresponding to the increase in the carload rates, and the spread between the carload rates to Montgomery and the less-than-carload rates to surrounding territory has thus been lessened, which it is contended has resulted in restricting the territory in which jobbers at Montgomery may sell because of the competition with less-than-carload movements from New Orleans.

The American Sugar Refining Company, with a refinery at New Orleans having a capacity of 3,200,000 pounds of sugar daily, urges that the present adjustment of rates on sugar, including the rates under complaint, as a result of the increases on April 1, 1919, casts a disproportionate share of increased operating costs on this particular commodity, especially on traffic from New Orleans. It offers comparisons of the 32-cent rate from New Orleans to Montgomery with carload rates on other commodities of similar transportation characteristics, such as flour, rice, salt, and grain and grain products. While the rate on sugar has been increased since June 24, 1918, 52.5 per cent, the rates on the other commodities have been increased but approximately 25 per cent. The present rates, minimum weights, ton-mile and car-mile revenue on these commodities are shown in the following table:

Commodity.	Rate.	Minimum weight.	Ton-mile revenue.	Car-mile revenue.
	<i>Cents.</i>	<i>Pounds.</i>	<i>Mills.</i>	<i>Cents.</i>
Sugar.....	32	33,000	20.13	33.2
Flour.....	22.5	(¹)	14.15	.....
Rice, cleaned.....	31.5	30,000	19.81	29.7
Salt.....	21.5	30,000	13.52	20.3
Grain and grain products.....	22.5	40,000	14.15	28.3

¹ Any quantity.

The average weight of shipments made by this intervener between January 1 and June 1, 1919, was 42,941 pounds, and the car-mile revenue under the rate to Montgomery was therefore 43.2 cents. The 26.5-cent rate to Montgomery produced 16.67 mills per ton-mile and car-mile revenue of 27.5 cents at the minimum weight, and 35.78 cents at the average weight shown. The other commodities named also load heavier than the minimum weight, but sufficient information to determine the average loading is not given.

Defendants contend that the increases under General Order No. 28 established a normal basis at the Ohio River points but resulted in a misalignment of rates to Memphis, Nashville, and other interior cities, such as Chattanooga, Birmingham, and Montgomery, the rates to which points had previously been related to the rates to the Ohio River cities and Nashville. They urge that the rate from New Orleans to Atlanta and other Georgia points and the small spread over Montgomery is justified by the market competition between New Orleans on the one hand and Savannah, Ga., New, York, N. Y., and Philadelphia, Pa., on the other; that the rate to Chattanooga is justified by competition between Chattanooga and Nashville, Louisville, Cincinnati, and Atlanta; that the relationship between the rates to Birmingham and to Chattanooga of 3 cents, which had been main-

tained since 1894, was continued because of competition of Birmingham with Chattanooga, and that the parity of Montgomery and Birmingham was preserved by a corresponding increase in the rate to Montgomery. They assert that there has been no relation between the class rates and commodity rates on sugar to these points; that the fifth-class rate to Montgomery was influenced by the combination of rates to and from Mobile, but that the same was not true of the rate on sugar.

Comparison is made by defendants of the rate on sugar to Montgomery with the rates to other points in Alabama, Mississippi, and Tennessee, with which the rates and revenue per ton-mile favorably compare. It is stated that there is a movement of beet sugar, in carloads, from or through Memphis, Tenn., Louisville, Ky., and Cincinnati, Ohio, and a movement of cane sugar from eastern refineries through Baltimore, Norfolk, and Charleston, and rates from these points to points in the southeast are shown which compare favorably with the rate from New Orleans to Montgomery. Higher rates for shorter distances are also shown from New Orleans to points in Texas. While there is doubtless a movement of sugar from Memphis, Ohio River crossings, and south Atlantic ports to points in the southeast, such movement is by no means comparable to that from the refineries at New Orleans and Savannah.

Rates on canned goods, dried beans and peas, starch, cabbage, onions and potatoes, molasses and sirup from Cincinnati, Louisville, Cairo, and Memphis to points in the southeast are shown which are higher than the rate on sugar from New Orleans to Montgomery, though for approximately equal distances. It is asserted that grain moves in greater volume from or through Ohio and Mississippi river crossings than any other commodity; that it is less valuable than sugar, and loads heavier, producing greater earnings per car even at lower rates. It is further urged that freight charges on sugar have not increased in any greater proportion than has the value of the commodity and that the ratio of the rate to Montgomery to the value is approximately 3.5 per cent, which is low.

As previously stated, the short-line distance from Savannah to Montgomery is 338 miles. The present rate is 34 cents. Prior to April 1, 1919, the rate was 31.5 cents. As with respect to the revision from New Orleans, defendants did not increase rates from Savannah to points in Georgia or to points in Alabama just east of Montgomery, and a rate of 31.5 cents is continued to points 4 and 7 miles east of Montgomery. This, complainants urge, supports their contention that the Savannah-Montgomery rate was changed to bolster up the increase from New Orleans, but defendants assert that a revision of these rates is proposed.

The following table shows a comparison of rates and ton-mile revenue from Savannah to Montgomery and other representative points:

Savannah to—	Distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Montgomery, Ala.....	338	34	20. 12
Chattanooga, Tenn.....	398	35	17. 50
Birmingham, Ala.....	427	35	16. 39
Anniston, Ala.....	364	32. 5	17. 86
Rome, Ga.....	334	24	14. 37
Atlanta, Ga.....	260	24	18. 46
Columbus, Ga.....	262	24	18. 33

The 31.5-cent rate previously in effect to Montgomery produced a revenue of 18.64 mills per ton-mile.

The rate on sugar from New Orleans to Atlanta is 3 cents higher than the rate to Montgomery for an additional distance of 175 miles. From Savannah the rate to Montgomery is 10 cents higher than to Atlanta for an additional 78 miles, and complainants insist that transportation conditions from the two points are substantially similar. Adhering to the contention that we, in effect, prescribed a maximum rate of 21.5 cents for 318 miles from New Orleans to Montgomery in the fourth section cases, complainants urge that by comparison the rate of 25 cents from Savannah was at that time unreasonable for the short-line distance of 338 miles, or even for the average distance of 387 miles, and that it should not have exceeded 23 cents. This, increased 25 per cent, would make the present rate 29 cents, which they maintain would be a reasonable rate.

Competition in the sale of sugar is keen, and, other things being equal, the retailer will often purchase his grocery supply where he can obtain sugar the cheapest; it is accordingly sold by the jobber at a small profit as a "leader" to secure orders for other merchandise. As an instance of the difficulty of distributing sugar from Montgomery against the competition of certain Georgia points, complainants show that Fitzpatrick, Ala., on the Central of Georgia, 28 miles from Montgomery and 67 miles from Columbus, Ga., can be reached by jobbers at Columbus at a combined in-and-out rate of 54 cents while complainants' lowest in-and-out rate is 54.5 cents. Columbus dealers obtain their sugar from Savannah, and Montgomery dealers are supplied from New Orleans. The distance from Savannah to Fitzpatrick through Columbus is 333 miles; from New Orleans through Montgomery 347 miles. This comparison is not intended to suggest that equality between competing jobbing points is required by the act, but merely to illustrate the rate adjustment. The inequality alleged is attributed to the unreasonableness of the rate to

Montgomery rather than to a subnormal character of the rates to competing points. Complainants insist that present conditions do not permit the jobbing of sugar from Montgomery for greater distances than 25 or 30 miles. Defendants show movements of sugar from Montgomery for substantially greater distances, but complainants urge that this is a result of a shortage of sugar and is not a normal condition. Confectionery manufacturers also claim to be disadvantageously affected in the disposition of their products, sugar being a substantial ingredient.

The position of the Savannah Sugar Refining Corporation is that the rate from Savannah to Montgomery is unreasonably high; that the rates to Atlanta and other associated points are just and reasonable; and that inasmuch as the distance from Savannah to Montgomery is but slightly greater than that from New Orleans, the rates from both markets should be the same and should not exceed 26.5 cents. Such a rate, its urges, would be ample under operating conditions surrounding the movement of sugar from Savannah. Any discrimination which exists against Montgomery it asks to have removed by a reduction in the rate to that point to a reasonable level. It is urged that sugar in carloads is recognized from a transportation standpoint as among the most attractive commodities which move in heavy volume; that it loads heavily, thereby yielding per car-mile revenue in excess of most other tonnage; that it requires no special equipment as do many articles taking lower rates, and that it needs no expedited or special service.

Defendants urged that the rates from Savannah to Georgia points shown are too low and that rates to other points in Georgia are higher, and expressed a purpose to increase all sugar rates from Savannah and Brunswick, Ga., to points having depressed rates and to reduce rates to intermediate points which are now higher.

The rate from Savannah to Atlanta and other competitive points in Georgia in effect prior to June 25, 1918, was 19 cents, which had been established in 1900 to correspond with a rate of 23 cents from New Orleans to Atlanta. The rate from New Orleans was increased on June 1, 1915, to 28 cents, and on June 25, 1918, to 35 cents. Inasmuch as the present rates from Savannah to Georgia points reached their low level by reason of their relation to rates from New Orleans, defendants contend that discrimination should be corrected by increasing the Georgia rates and not by reducing the rate to Montgomery. They further urge that rates from Savannah to Birmingham and Chattanooga are depressed rates made to meet competition from New Orleans.

In support of the reasonableness of the 34-cent rate to Montgomery defendants submitted comparisons with rates on sugar from
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eastern points and from south Atlantic ports to points in the southeast for distances approximating that to Montgomery which are higher than 34 cents. Sugar is said to move in carloads from Charleston and Jacksonville en route through these ports from eastern refineries.

The record contains little definite evidence of the extent of the movement from eastern points or from south Atlantic ports, except Savannah, to points in the southeast. It appears that the rates are not consistently adjusted, and a revision is proposed by the carriers, but in what manner is not shown, except to Georgia points.

As in connection with the rate from New Orleans, defendants show comparisons of the Savannah rate with higher rates on sugar from Ohio River crossings and Memphis to destinations in the south for similar or less distances.

From Savannah to Montgomery via the Atlantic Coast Line the distance is 411 miles. All points on that line in Alabama intermediate to Montgomery have a rate of 31.5 cents. Many intermediate points in Georgia are shown to have higher rates, but such rates are generally not commodity rates but sixth-class rates, and carload commodity rates in this territory are ordinarily lower than sixth-class rates.

Defendants compare rates and revenue per ton-mile and per car-mile from Savannah to Montgomery on sugar and other commodities which it is urged are shipped in substantial volume from Savannah and other south Atlantic ports, received in most instances from the north by water. Some of these comparisons are as follows:

Commodities and weights.	Rate.	Ton-mile revenue.	Car-mile revenue.
	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Sugar, minimum weight 33,000 pounds.....	34	20.12	33.2
Asphalt, pitch, tar, and road oil, minimum weight 40,000 pounds.....	26.5	15.68	31.86
Bagging, minimum weight 30,000 pounds.....	32.5	19.23	28.85
Beverages, mineral waters, etc., minimum weight 30,000 pounds.....	37.5	22.19	33.22
Canned goods, minimum weight 36,000 pounds.....	49	29	52.19
Soap, etc., minimum weight 36,000 pounds.....	32.5	19.23	28.85
Cotton ties, minimum weight 36,000 pounds.....	27.5	16.27	26.29
Molasses, minimum weight 36,000 pounds.....	36.5	21.6	35.68
Starch, minimum weight 30,000 pounds.....	37.5	22.19	33.22

It is urged on behalf of complainants, however, that the comparisons of defendants are unaccompanied by testimony of a similarity of transportation or traffic conditions.

Defendants insist that the present complaint raises the question of the reasonableness and propriety of the entire readjustment of April 1, 1919, and that consequently we should not deal with the Montgomery rate apart from the general structure of which it is a

part. Complainants contend that we have already fixed the reasonable rate from New Orleans to Montgomery in the fourth section proceedings and that this rate increased 25 per cent should not be exceeded. In the present proceeding only the rates from New Orleans and Savannah to Montgomery are under attack and complainants are entitled to a finding on the issue which they present.

The fixing of maximum rates at intermediate points in fourth section proceedings can not be considered as a finding that such rates are maximum reasonable rates when considered apart from the depressed rates to the competitive points. While rates prescribed in such proceedings should be given due weight they are not controlling.

There is no doubt that the rates on sugar from New Orleans to St. Louis and Ohio River crossings were prior to June 25, 1918, depressed rates; but the increase on that date can not of itself, without other substantial proof, be accepted as justifying the increased rate to Montgomery. It does not follow as a matter of course that, because the rates to the competitive points had been depressed, the rates to all interior points had been so held down as to be less than reasonable rates, and a showing that the rate to St. Louis for 700 miles was made 44.5 cents does not demonstrate that a rate of 32 cents to Montgomery for a distance of 318 miles is reasonable.

While sugar moves in carload quantities from a limited number of shipping points, it may be said that from those points the movement is heavy, especially from New Orleans and Savannah to points in the southeast.

As previously shown, the rate from New Orleans to Birmingham is maintained at 8 cents under that to Chattanooga, and the Montgomery rate is made the same as that to Birmingham. Montgomery does not compete with Chattanooga nor with Birmingham in Chattanooga territory. It does, however, compete with Atlanta and its relationship with Atlanta was changed in the last revision. It would seem that the relationship with Atlanta is at least equal in importance to that with Birmingham, now that the carriers claim to have disregarded the competitive influences at the river in their adjustment of sugar rates.

From New Orleans the distance to Atlanta is 493 miles over the short line through Montgomery, and the ton-mile revenue is 14.2 mills from the rate of 35 cents. This rate is an increase under General Order No. 28 of 25 per cent over the rate of 28 cents approved by us. On the same per ton-mile revenue the rate to Montgomery would be 22.5 cents. The present rate of 32 cents yields a revenue of 20.13 mills. Recognizing the principle that per ton-mile revenues normally

decrease as distance increases, a reasonable rate to Montgomery should not exceed 29 cents.

Defendants insist that the rate from Savannah to Atlanta has in the past been governed primarily by the rate from New Orleans to Atlanta. The distance from Savannah to Montgomery is not greatly in excess of the distance from New Orleans to the same point. The present rate from Savannah is 2 cents higher than that from New Orleans, and a rate made on that basis is not unreasonably low.

The record is not sufficient to justify any expression with respect to the level of the rates from Savannah to points in Georgia. Undue prejudice has not been sufficiently shown to warrant us in fixing a definite relationship which, in connection with the finding of a reasonable rate to Montgomery, would fix the rates to points in Georgia.

Upon consideration of the whole record, we are of the opinion and find that the rate on sugar, in carloads, from New Orleans to Montgomery has been since April 1, 1919, is, and for the future will be, unreasonable to the extent that it exceeded, exceeds, or may exceed 29 cents per 100 pounds; that the rate from Savannah to Montgomery has been since April 1, 1919, is, and for the future will be, unreasonable to the extent that it exceeded, exceeds, or may exceed 31 cents per 100 pounds.

We further find that prior to the date of hearing complainants H. M. Hobbie Grocery Company and Schloss & Kahn Grocery Company made shipments from New Orleans to Montgomery and that they paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceed those that would have accrued at the rate herein found reasonable, and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice. The record contains no proof that other complainants paid and bore the charges and reparation to them will not be awarded.

An appropriate order for the future will be entered.

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No. 10643.
LUKENS STEEL COMPANY
v.
**DIRECTOR GENERAL, PHILADELPHIA & READING
 RAILWAY COMPANY, ET AL.**

Submitted March 2, 1920. Decided May 22, 1920.

Rates on bituminous coal in carloads from points in West Virginia to Coatesville, Pa., found not unreasonable. Complaint dismissed.

Ralph B. Evans for complainant.

William L. Kinter for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions thereto were filed by complainant.

Complainant is a corporation engaged in the manufacture of iron and steel at Coatesville, Pa. By complaint, filed May 15, 1919, as amended, it alleges that the rates charged on 38 carloads of bituminous coal, shipped in February, March, and April, 1918, from points in West Virginia to Reading, Pa., and diverted at Rutherford, Pa., to Coatesville, were unreasonable. Reparation and the establishment of a reasonable rate for the future are asked. Rates are stated in amounts per long ton.

Coatesville is on the Wilmington & Northern branch of the Philadelphia & Reading Railway, hereinafter called the Reading, 31 miles from Birdsboro, Pa., the junction with the main line, and 29 miles from Elsmere Junction, Del., where the branch connects with the main line of the Baltimore & Ohio Railroad.

The shipments originated at American Mine, Swisher, Kingmont, Elkins, Grant, Mine 64, Industrial, Colliery No. 10, Meadowvale, Norwood, Waldo, Dawson, and Gallihue, W. Va., and moved over the Baltimore & Ohio to Hagerstown, Md., Cumberland Valley Railroad to Shippensburg, Pa., and the Reading through Rutherford, Reading, and Birdsboro, Pa., to Coatesville, about 445 miles from Elkins, a representative point of origin. They were originally con-

signed to the Reading and were being held at Rutherford. The United States Fuel Administrator directed that they be diverted to complainant at Coatesville, about 96 miles east of Rutherford. No joint rate applied over the route of movement and charges were collected on all the shipments, except the one from American Mine, at the applicable combination rate of \$2.70, composed of \$1.90 to Birdsboro and 80 cents beyond. Charges on the shipment from American Mine were based on the applicable combination rate of \$2.45, composed of \$1.65 to Birdsboro and 80 cents beyond. A charge of \$2 per car for diversion at Rutherford yards was also paid but is not in issue.

Complainant contends that the rate should not have exceeded the joint rate of \$1.90 contemporaneously applicable to Coatesville and Birdsboro over the Baltimore & Ohio and Reading, through Elsmere Junction. The distance from Elkins to Coatesville via this route is about 418 miles. The contemporaneous joint rate to Pencoyd, Pa., about 40 miles east of Birdsboro on the main line of the Reading, also referred to by complainant, was \$1.95.

For defendants it was testified that the route by way of Elsmere Junction is the one customarily used from West Virginia mines to Coatesville; that the Baltimore & Ohio, the originating carrier as to many of the shipments, gets the long haul over this route; and that the route through Shippensburg in connection with the Cumberland Valley involves a three-line haul and is not used on traffic destined to points on the Wilmington & Northern branch of the Reading. Defendants assert that they were in no way responsible for the routing of these shipments and that they moved over the only practical route from the diversion point. On June 25, 1918, the \$1.90 rate was increased to \$2.35 under General Order No. 28 of the Director General of Railroads, and the propriety of that increase is not attacked.

The \$2.70 rate yielded about 6 mills per ton-mile; the \$1.90 rate would yield about 4.2 mills per ton-mile.

We find that the rates assailed were not and are not unreasonable. An order will be entered dismissing the complaint.

No. 10753.
LOWRY LUMBER COMPANY
v.
DIRECTOR GENERAL, CHICAGO & ALTON RAILROAD
COMPANY, ET AL.

Submitted March 11, 1920. Decided May 22, 1920.

Error of initial carrier in diverting a carload of lumber from Memphis, Tenn., to Cairo, Ill., instead of to Alton, Ill., where it later arrived, not found to have resulted in damage to complainant. Complaint dismissed.

G. H. Lowry for complainant.

Hale Houts and *Fred C. Dumbeck* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner and no exceptions were filed by the parties.

The complainant, successor in interest to the Beekman Lumber Company, by complaint filed July 8, 1919, seeks damages for the alleged misrouting of a carload of yellow-pine lumber shipped August 30, 1917, from Aberdeen, Miss., to Kansas City, Mo., and subsequently diverted to Alton, Ill.

The shipment, weighing 41,000 pounds, was originally consigned to the shipper at Kansas City and moved via the St. Louis-San Francisco Railway, hereinafter called the Frisco, to Memphis, Tenn., where, in accordance with the shipper's orders, it was held until further instructions were received. On September 25, 1917, the shipper instructed the Frisco to divert it to the Beekman Lumber Company, Mounds, Ill., "for additional diversion." However, through error admitted by the Frisco, the car was billed to Cairo, Ill., where it arrived September 28, 1917, having moved via the Frisco to Chaffee, Mo., Chicago & Eastern Illinois Railroad to Tamms, Ill., and Mobile & Ohio Railroad beyond. The Beekman Lumber Company, upon learning that the shipment was at Cairo, ordered it reconsigned to Alton.

It moved there via the Mobile & Ohio to East St. Louis, Ill., and the Chicago & Alton Railroad beyond. Transportation charges were collected in the sum of \$104.55 based on a combination rate

of 25.5 cents per 100 pounds, composed of 17.1 cents to Cairo and 8.4 cents beyond. There was no joint rate in effect from Aberdeen to either Cairo or Alton over the route of movement and the rate applicable was 25.9 cents, composed of 10 cents to Memphis and 15.9 cents beyond. The shipment was therefore undercharged \$1.64.

Complainant asks reparation on the basis of a rate of 21.3 cents, which it is claimed would have been applicable had the shipment moved over the Illinois Central from Memphis by way of Mounds to East St. Louis and the Chicago & Alton beyond. There was no tariff authority for such a rate nor was there any joint rate in effect from Aberdeen to either Mounds or Alton over this route. The rate legally applicable over the route claimed was the same as over the route of movement.

We find that the Frisco violated the shipper's instructions in diverting the shipment to Cairo instead of Mounds, but no damage to complainant is shown to have resulted therefrom.

An order will be entered dismissing the complaint.

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No. 10821.

UNITED VERDE EXTENSION MINING COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted March 5, 1920. Decided May 22, 1920.

Rate on infusorial earth, in carloads, from Lompoc, Calif., to Clarkdale, Ariz., found unreasonable. Reparation awarded and reasonable maximum rate prescribed for the future.

E. H. B. Avery for complainant.

E. W. Camp for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in mining and smelting copper ore at Jerome and Clarkdale, Ariz., alleges by complaint seasonably filed, as amended, that an unreasonable rate was charged by defendants on 960 crates of insulating brick made from infusorial earth and 32 sacks of ground infusorial earth, shipped December 22, 1917, from Lompoc, Calif., to Clarkdale. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates hereinafter referred to are carload rates, stated in amounts per 100 pounds.

Lompoc is on the line of the Southern Pacific Company, approximately 181 miles north of Los Angeles. Clarkdale is on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, 38 miles east of Cedar Glade, Ariz. The shipment, weighing 55,859 pounds, moved over the Southern Pacific to Los Angeles, thence over the Santa Fe through Cedar Glade to destination. Charges were originally collected in the sum of \$886.03, the basis for which is not disclosed. At the hearing it developed that some uncertainty existed as to the exact nature of the commodities comprising the shipment. From investigation made by defendants after the hearing it appears that the shipment consisted of pure infusorial earth, part of it having been ground and the remainder being in blocks,

erroneously described in the billing as bricks. A refund of \$186.98, the basis of which was not disclosed, was thereupon made to complainant, leaving the net transportation charges collected \$678.69, based on a commodity rate of 17.5 cents from Lompoc to Los Angeles, Calif., plus the fifth-class rate beyond, erroneously assumed to be \$1.04. The rate applicable from Los Angeles to Clarkdale was a combination rate of \$1.02, based on fifth-class rates, respectively, of 83 cents to Cedar Glade and 19 cents beyond. The legal charges were \$667.51 and the shipment was overcharged \$11.18.

Contemporaneously a commodity rate of 50 cents, minimum weight 40,000 pounds, applied on infusorial earth, ground, in bags, from Lompoc to Cedar Glade, via the route of movement. The tariffs naming eastbound transcontinental rates on infusorial earth were not then and are not now restricted to ground earth and defendants concede that the commodity rate to Cedar Glade should have applied to infusorial earth without the restriction contained in the applicable tariff, and that when the shipment moved a reasonable rate from Lompoc to Clarkdale would not have exceeded that rate, plus the then arbitrary of 5 cents Clarkdale over Cedar Glade, which applied on clay products, brick, and other similar commodities. They express willingness to pay reparation upon the basis of a rate of 55 cents. Subsequent to the movement and pursuant to orders of the Director General of Railroads the 50-cent rate and the 5-cent arbitrary were respectively increased to 62.5 cents and 6.5 cents, and defendants propose to establish a joint commodity rate of 69 cents, minimum 40,000 pounds, applicable to the transportation of infusorial earth from Lompoc to Clarkdale.

We find that the rate applicable was unreasonable to the extent that it exceeded 55 cents per 100 pounds and that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed 69 cents per 100 pounds, minimum 40,000 pounds. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$371.47, with interest.

An appropriate order will be entered.

No. 10968.

ATLANTIC REFINING COMPANY

v.

DIRECTOR GENERAL AND PENNSYLVANIA RAILROAD
COMPANY.

Submitted March 19, 1920. Decided May 22, 1920.

Demurrage charges collected at Lancaster, Pa., for detention of a car unloaded before shipment because of an embargo, found not to have been unjust or otherwise unlawful. Complaint dismissed.

E. H. Porter and John H. Stone for complainant.

Henry Wolf Bikelé and Edwin A. Lucas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner. No exceptions were filed.

Complainant, a corporation engaged in refining and marketing petroleum and its products at Philadelphia, Pa., alleges that demurrage charges collected at Lancaster, Pa., in December, 1918, on a car containing an intended shipment of empty barrels were unjust and unlawful, in violation of section 10 of the federal control act. It seeks reparation only.

The car was ordered by complainant for use in forwarding a shipment of barrels to Point Breeze, Philadelphia, and placed for loading on its sidetrack December 28, 1918. The barrels were loaded in the car, but because of an embargo the Pennsylvania Railroad, hereinafter called defendant, refused to issue a bill of lading. The car was then unloaded by complainant and released December 31, 1918. Defendant's demurrage rules provided: "When empty cars placed for loading on orders are not used, demurrage will be charged from the first 7 a. m. after placing or tender until released, with no time allowance." Charges of \$3 per day for two days were collected for the detention.

Complainant does not question either the existence of the embargo or the amount of demurrage, its contention being that demurrage did not accrue because of any fault on its part, but because of defendant's failure to advise of the existence of the embargo before the car was

spotted for loading. In support of this complainant insists that on December 27, 1918, its agent inquired by telephone of defendant's yardmaster at Lancaster whether the proposed shipment could be made, and, if so, whether an empty car could be placed for loading; that the yardmaster replied to the effect that the shipment could be made and that no embargo existed. No one familiar with the facts pertaining to the ordering of the car appeared at the hearing on behalf of complainant.

For the defendant the yardmaster testified that he referred complainant's agent to the local rate clerk at Lancaster for information concerning the embargo, and that no instructions were given by him to place the car for loading. The conductor on what is known at Lancaster as the "shifter," who supervises the placement of empty cars under the general direction of the yardmaster, testified that it was the practice of complainant's agent to order empty cars from him; that his duties did not require a knowledge of embargoes; that he never sought information from shippers concerning proposed destination of equipment ordered; and that he never discussed embargoes in connection with the car in question. The local freight agent and the rate clerk at Lancaster, who kept in touch with embargoes and furnished information to shippers concerning them, testified that no inquiry was received by them prior to the loading of the car.

Upon this record we find that the demurrage charges assailed were not unjust or otherwise unlawful. The complaint will be dismissed.

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No. 10628.

NORTHERN GRAIN & WAREHOUSE COMPANY
v.
DIRECTOR GENERAL, NORTHERN PACIFIC RAILWAY
COMPANY, ET AL.

Submitted March 25, 1920. Decided May 22, 1920.

Rate of 76 cents per 100 pounds on oats, in carloads, from points in South Dakota to Portland and Helix, Oreg., and Tacoma, Wash., found to have been unreasonable to the extent that it exceeded 61 cents. Reparation awarded.

A. J. Parrington for complainant.

Paul P. Farrens for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions thereto were filed by the defendants.

Complainant, a corporation engaged in the grain business at Portland, Oreg., by complaint filed May 6, 1919, as amended, alleges that the rate of 76 cents per 100 pounds charged by defendants on five carloads of oats shipped during August, 1918, viz: Three from Canova, Fairview, and Salem, S. Dak., respectively, to Portland; one from Salem to Helix, Oreg.; and one, part of which originated at Bruce, S. Dak., and part at Salem, consolidated at Minneapolis, Minn., and forwarded to Tacoma, Wash., was unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, to the extent that it exceeded 61 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

All the shipments were accorded a transit service at Minneapolis and, with the exception of the one from Fairview, moved into Minneapolis over the Chicago & North Western. The shipment from Fairview moved into Minneapolis over the Chicago, Milwaukee & St. Paul. From Minneapolis they moved as follows: Those from Salem and Fairview to Portland over the Northern Pacific and the Spokane, Portland & Seattle; that from Canova to Portland over the Great

Northern and the Spokane, Portland & Seattle; that from Salem to Helix, and the consolidated shipment from Bruce and Salem to Tacoma, over the Northern Pacific. Charges were collected at the applicable joint commodity rate of 76 cents. On October 14, 1918, this rate was reduced to 61 cents.

With certain exceptions all points in the state of South Dakota east of the Missouri River, including these points of origin, are located in westbound transcontinental group F. Generally speaking, group F also includes points in the state of North Dakota east of the Missouri River, a large part of the state of Minnesota, and some points in Wisconsin and adjacent states. Prior to June 25, 1918, westbound transcontinental tariff named commodity rates of 50 cents on oats and 70 cents on wheat from group F points to these destinations. In the same tariff many of the lines serving group F territory named a "special" commodity rate of 55 cents on wheat from points on their lines to the same destinations, which under proper tariff provision took precedence over any higher rates. The Chicago & North Western and the Chicago, Milwaukee & St. Paul did not name "special" commodity rates on wheat from and to the points of origin and destination here considered. On June 25, 1918, pursuant to General Order No. 28, of the Director General of Railroads, the rates on wheat were generally increased 25 per cent, with a maximum of 6 cents, and were made applicable to coarse grain, including oats. This resulted in rates on wheat and coarse grain of 76 cents from group F points to the destinations to which the wheat rate had been 70 cents, and of 61 cents where the "special" commodity rate of 55 cents on wheat had been applicable.

For complainant it was testified that the westbound movement of grain is mostly confined to oats and that when the shipments moved a rate of 61 cents applied on oats to the same destinations from many points in group F in South Dakota near the points of origin, from a large number of points in Minnesota, including Duluth, St. Paul, and Minneapolis, and from points in Wisconsin, including Superior.

The application of the wheat rates to coarse grain disrupted an adjustment under which the rates on oats were generally the same from all group F points to these destinations, and resulted in different rates from points in the same general territory. In some instances the resulting transportation charges were greater for shorter than for longer distances in violation of section 4 of the act.

Defendants urge that the rate assailed was established in conformity with General Order No. 28, and that the subsequent reduction was voluntarily made for the purpose of realigning the rates from group F points so as to put them on the same relative basis as formerly existed.

We find that the rate assailed was unreasonable to the extent that it exceeded 61 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

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No. 10999.

PHILADELPHIA QUARTZ COMPANY

v.

DIRECTOR GENERAL OF RAILROADS, AS AGENT.

Submitted March 17, 1920. Decided May 22, 1920.

Rates on coal ashes and cinders in carloads from Jersey City, N. J., to Rahway and Woodbridge, N. J., and from Perth Amboy, N. J., to Rahway, found unreasonable. Reparation awarded.

William Martin for complainant.

Henry Wolf Bikelé for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions thereto were filed by the defendants.

Complainant, a corporation engaged in the manufacture of silicate of soda at Rahway, N. J., alleges that the rates charged on 19 carloads of coal ashes and cinders shipped from Jersey City, N. J., to Rahway and Woodbridge, N. J., and from Perth Amboy, N. J., to Rahway between September 26, 1918, and March 26, 1919, both inclusive, were unjust and unreasonable in violation of section 10 of the federal control act. Reparation only is sought. Rates will be stated in cents per 100 pounds unless otherwise specified.

Fourteen of the shipments moved from Jersey City over the Pennsylvania Railroad—nine to Rahway and five to Woodbridge, 19 and 23 miles, respectively. The remaining five moved from Perth Amboy to Rahway over the Central Railroad of New Jersey via Perth Amboy Junction, N. J., and the Pennsylvania, 7 miles. Charges were assessed at the applicable sixth-class rate of 7 cents, governed by the official classification, subject to the minimum-rate provision authorized by General Order No. 28 of the Director General of Railroads.

It was testified on behalf of complainant that the Pennsylvania was requested on March 5, 1919, to establish commodity rates on this traffic, and that on April 17, 1919, rates from Jersey City of 3 cents

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to Rahway and 3.5 cents to Woodbridge were published and are still in effect. No change has been made in the rate from Perth Amboy. Complainant's contention is that the rate assailed was unreasonable to the extent that it exceeded 2 cents from Perth Amboy to Rahway, 8 cents from Jersey City to Rahway, and 3.5 cents from Jersey City to Woodbridge. It contrasts the rate charged with a commodity rate of 2 cents from Jersey City to Carteret, N. J., on the Central of New Jersey in the vicinity of Rahway, for a haul of 16 miles, and claims to have made due allowance for the difference in distance in naming the rates from Jersey City for which it contends.

Defendant's witness testified that the movement of cinders and ashes from Jersey City to Rahway and Woodbridge is over the heavily traveled main line of the Pennsylvania and requires two classification-yard movements, one at Meadows yard and the other at Waverly yard; and that on the shipments from Perth Amboy the Central of New Jersey received 12.5 cents per net ton. An exhibit detailing the shipments was introduced to show the time during which the equipment used was unavailable for other purposes. Defendant's witness also introduced a statement of rates on ashes, cinders, and slag from and to several New Jersey points, ranging from 2.5 cents for 3 miles to 5.5 cents for 43 miles; and on ashes and cinders to and from several Pennsylvania points ranging from 3 cents for 6 miles to 5 cents for 19 miles. This witness testified that 5 cents would be a reasonable rate on this traffic moving in fairly large volume and that a lower rate would be "too low."

The cars in which the shipments were made from Jersey City had arrived there laden with coal, and the ashes and cinders afforded a revenue-producing traffic as far as Rahway on the return movement to the mines.

The shipments averaged 90,125 pounds per car and yielded an average revenue of \$63.09 per car. The rate assailed yielded from Perth Amboy 20 cents per ton-mile, and, based on 99,512 pounds, the average loading from that point, an average of \$69.66 per car and \$9.95 per car-mile. From Jersey City to Rahway it yielded an average of about 7.37 cents per ton-mile, and, based on 87,866 pounds, the average loading, an average of \$61.51 per car and \$3.24 per car-mile. The present commodity rates from Jersey City of 3 cents to Rahway and 3.5 cents to Woodbridge yield ton-mile revenues of 3.16 cents and 3.04 cents, respectively, and car-mile revenues, based on an average of 87,866 pounds, of \$26.36 and \$30.75, respectively. A 2-cent rate from Perth Amboy to Rahway would yield 5.7 cents per ton-mile, and, based on 99,512 pounds, an average revenue per car of \$19.90.

In *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.*, 43 I. C. C., 1, decided January 22, 1917, we found the following rates per net ton on coal ashes, cinders, and foundry dirt, in carloads to Carney's Point, N. J., to have been reasonable: \$1 from Birdsboro and Reading, Pa., 94 and 104 miles, respectively; 80 cents from Coatesville, Pa., 63 miles; 70 cents from Rockford, Del., 39 miles; and from Wilmington, Del., 30 miles, 60 cents on local traffic, and 80 cents on traffic received from connecting lines.

We find that the rates charged were unreasonable to the extent that they exceeded 3 cents per 100 pounds from Jersey City to Rahway; 3.5 cents per 100 pounds from Jersey City to Woodbridge; and 2 cents per 100 pounds from Perth Amboy to Rahway; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued on basis of the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should comply with rule V of the Rules of Practice.

Complainant also asks reparation on account of war taxes collected in excess of those which would have accrued if computed upon the basis of the rates herein found reasonable. We are without power to order refund of war taxes.

57 I. C. C.

No. 11015.
LOWRY LUMBER COMPANY
v.
DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted March 1, 1920. Decided May 24, 1920.

Charges on a carload of lumber from Derry, La., to Dupo, Ill., reconsigned to Rushville, Ind., not shown to have been assessed on an excessive weight. Complaint dismissed.

G. H. Lowry for complainant.

James M. Chaney for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

By DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions were filed by the parties.

Complainant is a corporation engaged in the lumber business at Kansas City, Mo. It alleges that the charges collected by defendants on a carload of lumber shipped March 4, 1919, from Derry, La., to Dupo, Ill., and reconsigned to Rushville, Ind., were unjust and unreasonable in that they were based on an excessive weight. Reparation is asked.

The shipment consisted of 20,725 feet of yellow-pine lumber. It moved over defendant carriers' lines and charges were collected upon a net weight of 57,240 pounds, the weight registered on March 19, 1919, by the track scales of the initial carrier at Shreveport, La., an intermediate point. Complainant submitted a copy of its letter of April 4, 1919, to the agent of defendant Missouri Pacific Railroad at Dupo, in which it stated that the weight per 1,000 feet of dry yellow-pine lumber ordinarily does not exceed 2,500 pounds and requested that the shipment be check-weighed at destination. Delivery was effected, however, before that letter was received by the carrier. Complainant also submitted a letter from the consignee in which it is stated that 100 feet of the lumber in question, cut into 5-foot lengths after shipment, had been weighed and the weight

thereof found to be 220 pounds. It contends that on that basis 45,600 pounds is an ample estimate of the weight of the entire shipment.

Defendants show that the shipment was track scaled at Shreveport under the supervision of the Western Weighing & Inspection Bureau, by a sworn weighmaster, upon scales which were tested and found correct on March 5, 1919.

We find that complainant's allegation has not been sustained. An order dismissing the complaint will be entered.

57 I. C. C.

No. 11150.

RUDY-PATRICK SEED COMPANY

v.

DIRECTOR GENERAL, AS AGENT, COLORADO &
SOUTHERN RAILWAY COMPANY, ET AL.

Submitted March 10, 1920. Decided May 24, 1920.

Joint rates on sweet-clover seed, in carloads, from Wheatland, Wyo., to Kansas City, Mo., found unreasonable to the extent that they exceeded the aggregates of the contemporaneous intermediate rates to and from Cheyenne, Wyo. Reparation awarded.

J. H. Tedrow for complainant.

Geo. Williams for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale seed business at Kansas City, Mo. By complaint filed January 13, 1920, as amended, it alleges that the rates charged on three carloads of sweet-clover seed shipped from Wheatland, Wyo., to Kansas City, via Cheyenne, Wyo., January 2 and December 16, 1918, and January 16, 1919, respectively, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section to the extent that they exceeded the aggregates of the contemporaneous intermediate rates to and from Cheyenne. Reparation is asked, including an item for war taxes. Rates are stated in cents per 100 pounds.

The rates charged were the applicable class A rates of 85 cents prior to June 25, 1918, and 106.5 cents thereafter. Contemporaneously there were in effect combination rates consisting of class B rates from Wheatland to Cheyenne applicable on interstate traffic and commodity rates beyond, aggregating 66 cents prior to June 25, 1918, and 83 cents thereafter. On February 29, 1920, defendants published a joint rate of 83 cents, equal to the Cheyenne combination, thus removing the fourth section departure which was not protected by application or otherwise. They make no defense of the rates assailed, and express their acquiescence in an award of reparation on the bases of the respective combinations.

We find that the rates assailed were unreasonable to the extent that they exceeded the aggregates of the intermediate rates subject to the act contemporaneously in effect to and from Cheyenne. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation in the sum of \$269.50, with interest. We are without power to order refund of war taxes.

An order awarding reparation will be entered.

57 I. C. C.

No. 10097.

ST. LOUIS CHAMBER OF COMMERCE

v.

BALTIMORE & OHIO RAILROAD COMPANY, DIRECTOR
GENERAL, ET AL.

Submitted April 10, 1919. Decided May 11, 1920.

1. The relationship of rates on coal from mines in Illinois and Indiana, under which the rate to St. Louis, Mo., on the west bank of the Mississippi River, is 20 cents a ton higher than the contemporaneous rate to East St. Louis, Ill., directly opposite on the east bank, held not to be improper.
2. Owing to the short haul on this coal, the volume of the rate to East St. Louis held to be insufficient, without an undue depletion of line-haul revenues, to require the absorption of this differential, which is the charge of the Terminal Railroad Association of St. Louis for the transfer of the coal across its Mississippi River bridges and ferries and its delivery in St. Louis. Difference in treatment of differentials on long and short haul traffic discussed.
3. The mere fact that certain of the lines that bring this coal from the mines to East St. Louis, as a part of the transportation to St. Louis, are proprietary lines of the terminal association referred to, which operates their joint terminals as a unit in and between the St. Louis and East St. Louis rate districts, does not require, as a matter of correct legal interpretation, the application of a common rate to the two districts. Nor is it material to the issue presented in this case whether the cities of St. Louis and East St. Louis are to be viewed as together comprising but a single industrial and economic unit.

Joseph W. Folk and Sidney F. Andrews for complainant.

Chas. H. Daves for city of St. Louis and *R. W. Ropiequet* for East St. Louis Chamber of Commerce, Commercial Club of Granite City, and East Side Manufacturers' Association, interveners.

A. P. Humburg, Morison R. Waite, E. C. Kramer, R. V. Fletcher, T. M. Pierce, M. W. Schaefer, Alex M. Bull, William Burger, Kenneth F. Burgess, Carl Fox, Henry G. Herbel, J. L. Howell, S. H. Strawn, Chas. P. Stewart, John R. Turney, D. P. Williams, and N. S. Brown for defendants.

REPORT OF THE COMMISSION.

The complaint here, to which the Director General of Railroads has been made a party, is that on coal from mines in Illinois and Indiana the rate to St. Louis, Mo., on the west bank of the Mississippi

River, exceeds by 20 cents a ton the rate to East St. Louis, Ill., directly opposite on the east bank, and the prayer is for an equality in rate to the two points. All of the coal destined to St. Louis passes through the East St. Louis industrial district extending from Granite City, Ill., on the north to Dupu, Ill., on the south, 7 and 8 miles, respectively, from East St. Louis. At all of the above points, except Dupu, the coal is handled via the Terminal Railroad Association of St. Louis, hereinafter called the terminal association, for transfer across the bridges or ferries for final delivery in St. Louis either on its own rails or on those of connecting carriers. The Missouri Pacific Railroad handles traffic over its own rails from certain Illinois mines to St. Louis via Dupu. The Wabash, the St. Louis & O'Fallon Railroad, the latter a nonproprietary line, as well as the Missouri Pacific, operate over certain of the bridges of the terminal association with their own power. The rates in connection with the terminal are published as joint rates.

Only a small part of the coal in question originates at the Indiana mines, which are distant from 161 to 229 miles from East St. Louis. Most of it originates at the Illinois mines, which are distant from 9 to 124 miles from East St. Louis, and which are divided for rate-making purposes into 13 related groups. As a matter of fact the real issue relates to the adjustment from the nearest and largest of these Illinois groups, which is group 2, or the so-called "inner group." It is in this group that about 80 per cent of the combined St. Louis-East St. Louis coal originates. The nearest mine in this group is 9 miles, and the farthest 82 miles, from East St. Louis. The weighted-average haul from this group to East St. Louis is about 24 miles.

At the time the complaint was filed the rates, per ton, from group 2 were 52½ cents to East St. Louis and 72½ cents to St. Louis. The maximum rates from the other Illinois groups, which were also the rates from the Indiana mines, were 75 cents to East St. Louis and 95 cents to St. Louis. By General Order No. 28 of the Director-General of Railroads these rates have since been increased 20 cents from the Illinois mines and 25 cents from the Indiana mines.

It is the contention of the complainant that, in view of this extensive grouping of the mines, St. Louis and East St. Louis, as destination points separated only by the Mississippi River, should also be grouped, on the theory that together the two cities form in reality but one industrial district, to which a common rate should apply. In this connection reference is made by the complainant to the fact that the two cities are treated as one industrial district in boat rates on the river; live stock rates from the west; lumber rates from the south; and rates on classes and commodities generally, except in

some instances on coal, from and to points beyond a hundred-mile zone.

The complaint is primarily one of discrimination, and it would be equally satisfactory to the complainant whether the alleged inequality were removed by an increase in the rate to East St. Louis or by a reduction in the rate to St. Louis.

East St. Louis has intervened in opposition to the prayer of the petition, substantially on the ground that it is entitled to the benefit of its location right at the door, so to speak, of the Illinois coal deposits, with a shorter mileage than to St. Louis, and without the bridge expense of the latter point. It suggests that, if anything, in the present day of increased rates and operating costs, the 20-cent differential for crossing the river should be increased rather than abolished or reduced.

The differential has been 20 cents since 1906. Prior to that time, when the rate to St. Louis was the combination on East St. Louis, it was 30 cents. The Illinois Commission has permitted changes from time to time in the intrastate rates to East St. Louis, contemporaneously with changes in the interstate rates to St. Louis, in order to preserve the present differential.

The terminal association, whose charge, as explained, represents the differential here complained of, is a corporate organization which owns the terminal facilities, on both the St. Louis and the East St. Louis sides of the Mississippi, of the fourteen proprietary lines which own its capital stock in equal shares. It owns and controls also the Merchants' bridge and the Eads bridge, together with the Wiggins ferry, used in the transportation of all its freight between the two sides of the river. It has 193.53 miles of track on the East St. Louis side of the river and 146.86 miles on the St. Louis side, including extensive classification yards in both districts, and serves a large portion of the 64 square miles of area embraced within the limits of the city of St. Louis. Certain belt lines in both districts are included in its facilities. Its equipment includes 152 locomotives, 178 work cars in company service, 16 passenger cars, 3 ferryboats for passengers and wagons, 1 tug, 1 barge, and 2 car ferries. Its organization, purposes, and limitations are fully described in *United States v. Terminal Railroad Association of St. Louis*, 224 U. S., 383.

For the year 1916 the tax valuation of the Eads bridge was \$4,200,005, and for the Merchants' bridge \$1,420,205. Based on valuation per mile of Illinois railroads, as determined by the Illinois State Board of Equalization, the tax valuation of the Eads bridge is equivalent, using these roads as illustrative, to 174 miles of the Chicago & Eastern Illinois; 269 miles of the Louisville & Nashville; 360

miles of the Chicago, Peoria & St. Louis; 470 miles of the Litchfield & Madison; and 197 miles of the St. Louis & O'Fallon. Similarly with respect to the Merchants' bridge the figures for these roads range from 58 to 187 miles. At the St. Louis end of the Eads bridge the coal passes through a tunnel about a mile long through a congested portion of St. Louis.

It is the contention of the complainant that the facilities of the terminal association should be regarded as a continuation, in the form of terminals, of the proprietary lines, and not as the facilities of a separate composite connecting carrier, which may make a separate charge for its service, and that upon arrival of the St. Louis coal at East St. Louis it should be regarded as having reached the St. Louis rate district, as defined by the complainant, for delivery thence across the river in St. Louis, as a part discharge by the proprietary lines of their duty under the St. Louis rate. It is urged by the complainant that the facilities of the terminal association have been acquired, managed, and operated as a unit, embracing both sides of the river and the transfer across, and that they can not be divided for the sole purpose of making different rates to the respective points—in short, that “a unified terminal means a uniform rate therein.” In other words, the complainant views the matter as one of law, in which the question of greater service by the terminal association on St. Louis coal than on East St. Louis coal has no more place than has the similar question of difference in cost of service by the association on coal destined to different industries in St. Louis itself, which is not reflected in the rate.

In this connection criticism is made by the complainant of the fact that on East St. Louis coal the proprietary lines absorb the terminal association's charge of 10 cents a ton for terminal delivery, whereas on St. Louis coal they make no absorption of any part of that association's charge of 20 cents a ton, but retain their full rate for the same service that they render on their East St. Louis coal. It is the contention of the complainant in this respect that it is improper for these lines thus to treat the facilities of the terminal association as a continuation of their rails on the East St. Louis coal, but as a connecting carrier on the coal destined to the west side of the river. The reason for this absorption on the east-side coal is said by the defendants to be the competition of carriers that make deliveries on their own lines direct from the mines, with the result that unless the lines that do not reach those same industries with their own rails absorb the terminal association's charge, they will be shut out of those industries with their coal. This 10 cents a ton, it should be explained, is the maximum of the east-side absorption. When another line, in addition to the terminal associa-

tion, performs a second terminal service, the shipper is required to pay for that service \$3 a car.

But there is also, as the defendants point out, an even greater absorption required by the east-side lines on the greater part of the St. Louis coal than there is on the East St. Louis coal, due to this situation: Neither on the St. Louis nor on the East St. Louis side of the river do the rails of the terminal association constitute the entire terminal mileage of the respective rate districts. There are on both sides of the river, especially on the St. Louis side, additional terminals, which are owned and operated by the railway systems of which they are a part, independently of the terminal association, and which are owned in some instances by proprietary lines of the terminal association in addition to their membership interest in the facilities of that association.¹ Some of these lines with independent St. Louis terminals serve Illinois mines with their own rails, and are therefore in position to accord to industries located on those terminals, and beyond the rails of the terminal association, the same rate that is applied to industries reached by the terminal association. The result is that on coal which is delivered to industries located on these independent terminals, after passing en route, in many instances, over the rails of the terminal association, the east-side lines, in order to meet the rate of the independent terminal lines from the mines, are required to absorb the switching charge of the latter lines. This absorption, which amounts to 13 cents a ton, is required to be made on about 61 per cent of all the St. Louis district coal received from the Illinois mines, which comprises a volume much greater than that of the east-side coal, on which the absorption of 10 cents a ton is made.

It is the assertion of the proprietary lines, and particularly of certain nonproprietary lines to be presently referred to, that they could not continue also to absorb this 13 cents a ton, if they should be required, as a result of this proceeding, to absorb the terminal association's charge of 20 cents a ton, and that the result would accordingly be that the shippers of nearly two-thirds of the entire coal tonnage of the St. Louis district would be required to pay 13 cents a ton more than the shippers of the other third, in order that the one-third might be placed on a rate parity with the shippers of the East St. Louis coal. Although the allegations of the petition are directed against rates which apply to the whole of the St. Louis

¹ It has been stated that the terminal association has 193.53 miles of track on the East St. Louis side of the river and 146.86 miles on the St. Louis side. Adding to these the independent terminal tracks described will increase these figures, approximately, to 250 and 675 miles for the respective rate districts. The St. Louis rate district, that is, the district over which the St. Louis rate applies, embraces an area of about 75 square miles.

district as above described, it appears from the record, and from the brief of the complainant, that the primary concern of the complainant is in the rates to points of delivery reached by the terminal association. It seems to be the contention of the complainant with respect to shipments destined to points of delivery beyond the rails of that association, on which the 13 cents a ton is absorbed, that this is a matter of competition for the east-side lines to settle for themselves, and with which the complainant is not concerned.

In addition to the fourteen proprietary lines of the terminal association the allegations of the petition are directed also against seven nonproprietary lines, or lines which have no stock interest in the terminal association and which in 1917 originated and transported to East St. Louis, for interchange with that association for completion of the transportation, about 55 per cent of the total volume of St. Louis coal received from the Illinois mines. Five of these, the East St. Louis & Suburban, the St. Louis & Belleville Electric, the Litchfield & Madison, the St. Louis & O'Fallon, and the St. Louis, Troy & Eastern, are short roads carrying coal almost exclusively. These nonproprietary lines, however, are permitted the use of the facilities of the terminal association on the same terms as the proprietary lines. They make the same absorptions of 10 cents a ton on the East St. Louis coal and 13 cents a ton on the St. Louis coal that the proprietary lines do. The contention of the complainant with respect to the nonproprietary lines is that it is by their own choice that they are not members of the terminal association, membership being open to them on the same terms as to the proprietary lines, and that the fact that they have not seen fit to become members should not be allowed to operate to deprive the complainant of its legal rights with respect to the proprietary lines.

Another fact particularly stressed by the complainant is that the East St. Louis rate is extended as far north of East St. Louis as Granite City, a distance of 7 miles, and as far south of East St. Louis as Dupon, a distance of 8 miles, and that it requires in some instances a longer haul than is sometimes required in making St. Louis deliveries. It appears from the testimony of the defendants that the reason for this extension of the East St. Louis rate is the competition of the different carriers from their respective mines, some of which reach East St. Louis from the north and south as well as directly from the east. For example, a line reaching East St. Louis from the southern end of the East St. Louis district, and having no rails to Madison, in the northern part of the district, may be required, in order to meet the competition of a line which applies the East St. Louis rate to Madison as an intermediate point on its route from the north, to absorb the charge of a connection from East St. Louis to Madison.

Substantially the foregoing general situation was presented in *The Illinois Coal Cases*, 32 I. C. C., 659, decided January 29, 1915, where the propriety of this same differential of 20 cents a ton was upheld. Conditions have not essentially changed since then. Neither the subsequent increase in the rates to both St. Louis and East St. Louis, nor the direct operation of the railroads by the federal government has changed either the fact or the amount of this differential. Nor has the subsequent construction by the city of St. Louis of the new Municipal bridge to connect that point with East St. Louis, stressed particularly and at great length by the complainant, any material effect upon the present issue. Perhaps the only power that the Commission, in any event, would have in connection with the use of this bridge by the trunk lines would be to require them, on a reasonable and proper basis, to establish through routes and joint rates with some municipal or other railway which might in future be organized and constructed to operate over it.¹ Certain cases relied on, some of them decided since the case just mentioned, will be referred to in detail later.

The real question to be decided in this case is whether the relationship is proper between the St. Louis and the East St. Louis rates, as through-rate units from the mines to final points of delivery, regardless of whether these rates should be viewed as the rates only of the carriers from the mines to East St. Louis, which require delivery on the rails of the terminal association in St. Louis as a continuation of their line haul to a point in the St. Louis district, as defined by the complainant, or as the joint rates of the line carriers to East St. Louis and the terminal association as a connecting carrier.² Therefore, even if, as contended by the complainant, this coal

¹ This bridge has recently been completed at a cost to the city of St. Louis of about \$6,250,000. It is a thoroughly modern structure, an improvement upon the Merchants' and Eads bridges, with an upper and lower deck, the upper for pedestrian, street car, and vehicular traffic, and the lower for railway freight and passengers. It is now being used for pedestrian and vehicular traffic, and the tracks are laid for street-car service, but have not been connected for use at the bridge ends. The freight tracks have also been laid, ready to be connected at suitable approaches on both sides of the river. They have a temporary connection with the Alton & Southern on the East St. Louis side of the river, but no connection on the St. Louis side. Engineers estimate at from \$500,000 to \$3,000,000 the cost of proper approaches and facilities for the adequate connection of this bridge with the carriers on both sides of the river. The municipal ordinance under which the bridge was built provides that it shall be forever free to pedestrians and vehicles, and that the freight rate on traffic passing over it to St. Louis shall not exceed that to East St. Louis. It further provides that the cost of operating the bridge by the railroads shall be borne by the carriers using it.

² If this conclusion is sound, it disposes of the point raised respecting the absorption of 10 cents a ton by the east-side lines on the East St. Louis coal when delivered on the rails of the terminal association. The shipper is not interested in how the east-side rate is made or divided. The Commission held in *The Illinois Coal Cases* that this absorption on the east-side coal was a matter of divisions, in which the shipper was not interested. The question here is whether it is proper to charge 20 cents a ton more on the St. Louis coal than on the East St. Louis coal regardless of how either or both of the rates are made or divided.

is to be viewed as passing in transit over the rails of only one railway system from the mine to point of delivery in the St. Louis district, what are really the two determinative questions in the case would still remain for consideration, namely, the relative services rendered by the defendants on the St. Louis and the East St. Louis coal under the respective through-rate units, and the sufficiency of the volume of the rate to East St. Louis, in view of the short haul, to require absorption, without unduly encroaching upon the defendants' line-haul revenues, of any additional cost of performing the St. Louis service.

The record clearly indicates that, looking first at the two present rate districts as a whole, including both terminal association and independent terminals, the service rendered by the transportation agencies in the through routes from the mines to final points of delivery is greater, both from the standpoint of mileage and of expense per mile, on the St. Louis coal than it is on the East St. Louis coal. The service beyond East St. Louis on the St. Louis coal is over expensive bridges and through a congested metropolitan city district, where the cost of terminal acquisition and upkeep is very great. Some idea of the expensive and complicated character of this service is afforded by the testimony given on behalf of the terminal association, which it will be unnecessary to refer to in detail here.

The record contains interesting figures on actual mileages to and within the two rate districts, aside from the difference in the character and expense of the two services. It has already been stated that the average weighted haul from group 2 to East St. Louis is about 24 miles. The average weighted haul from this group to St. Louis is not shown. Figures are given, however, for the two districts from the four Illinois groups which originate more than 95 per cent of the coal tonnage of those districts. The principal one of these groups is, of course, group 2. These figures are for a test period of six days in April, 1918, and show average weighted mileages of 31.9 miles to the East St. Louis district and 44.4 miles to the St. Louis district, or a mileage to the St. Louis side of the river 39.18 per cent greater than to the East St. Louis side. It has been stated that the average weighted haul of 24 miles from group 2 obtains on about 80 per cent of the combined St. Louis-East St. Louis coal. The present rate to East St. Louis, out of which would have to be shrunk the 20 cents a ton of the terminal association, is 72½ cents, and the rate in effect when the complaint was filed was 52½ cents. The amount of this absorption would therefore represent 27½ per cent of the present rate and 38 per cent of the rate in effect when the complaint was filed.

The record further indicates that the service rendered on the coal delivered only on the rails of the terminal association itself is also materially greater on the St. Louis coal than it is on the East St. Louis coal. Although it was testified on behalf of the complainant that most of the coal-consuming industries in the St. Louis district are located not far from the river, it was found in *The Illinois Coal Cases*, already referred to, that the weighted-average haul of the terminal association within the East St. Louis district was $3\frac{1}{2}$ miles, and within the St. Louis district $8\frac{1}{2}$ miles, and these are testified to by the witness for the terminal association as representing approximately the respective services to-day.

The propriety of a difference in treatment of differentials between contiguous points on long and short haul traffic has been recognized by the Commission. The reason for this is that on the long-haul traffic the volume of the rate is permitted by the distance to increase to a point where the additional cost of the service represented by the differential can be spread thinly over the line haul and finally absorbed without unduly encroaching upon the line-haul revenues, whereas on the short-haul traffic the distance is not such as to permit of a sufficient increase in the volume of the rate to warrant that absorption. A reflection of this principle in the general class and commodity rate adjustment to these very points, St. Louis and East St. Louis, was approved in *Business Men's League of St. Louis v. A., T. & S. F. Ry. Co.*, 44 I. C. C., 308. Under that adjustment the differential between the two cities is absorbed on traffic originating beyond a hundred-mile zone and assessed against the shipper on traffic originating within that zone. It seems clear from the foregoing figures that the propriety of this principle must also be recognized with respect to this coal, on 80 per cent of which the distance to East St. Louis is within a 25 instead of a hundred-mile zone, and on which the level of the rate to East St. Louis is such as to be seriously affected by the absorption of 20 cents a ton suggested. That rate has not been shown or alleged to be unreasonable for the service performed. In fact the rate in effect prior to the last increase by order of the Director General of Railroads was looked upon with approval by the Commission in *The Illinois Coal Cases*. Nor has any showing or allegation of unreasonableness been made by the complainant with respect to the amount of the differential itself.

The soundness of the foregoing conclusion would not be materially affected even should it be conceded that St. Louis and East St. Louis comprise together but one industrial district. There is no requirement of law that the rate shall be the same to all points of
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delivery in the same industrial district, even when the district is all embraced within the municipal limits of one city instead of comprising two separate municipalities, as the industrial district as defined by the complainant here does. For example, the Commission has established differentials over the Chicago proper rate to the farther distant points of delivery in the Chicago city limits, and under natural conditions more favorable to a common rate than are encountered in this case. *Gilmore & Co. v. C. & N. W. Ry. Co.*, 25 I. C. C., 403; *Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co.*, 30 I. C. C., 71. The findings in these cases bear directly upon one of the contentions of the complainant, namely, that the assessing of the St. Louis differential is due to the technical interposition of the Mississippi River and of the Illinois-Missouri state line, and that in principle there is no more reason for making an extra charge to St. Louis over East St. Louis than there is for making different rates to the near and far sides of the Chicago River in the Chicago district. This contention misses wholly the real reason for the differential. The state line enters into it not at all, and the Mississippi River plays a prominent part only because of its extreme width and the corresponding cost in investment and service of crossing it, which cost and service, added to that of making delivery on the St. Louis terminals, represent, in connection with the line haul to East St. Louis, a total mileage and cost per mile from the mine to final point of delivery in St. Louis considerably greater than the contemporaneous total mileage and cost per mile from the mine to final point of delivery in East St. Louis. Doubtless any other natural barrier which so completely divides two cities, or even the two parts of one city or industrial district, as the Mississippi River divides St. Louis and East St. Louis, and which involves the difference in the character, mileage, and expense per mile of the two services here shown, would result in a similar differential on the short-haul traffic.

General reference has already been made to the contention of the complainant that the East St. Louis rate should be extended to include St. Louis, because the St. Louis rate district, or delivering group, is disproportionately small when compared with the extensive area of group 2 as an originating group. There is no requirement of law that origin and destination groups shall be coextensive in area. Except, perhaps, in the adjustment of transcontinental rates it may be said to be the usual practice for origin group rates to apply to destination points singly or grouped only a few together. This is the general plan of the adjustment of the rates applicable from the coal and lumber blanket territories of the country, which present the most typical and important instances of grouping. There are, for example, no destination groups to corre-

spond with the southwestern lumber blanket, which extends, west of the Mississippi River, south from the Arkansas River to the Gulf of Mexico, or with the southeastern lumber blankets found on the other side of that river. A point which the complainant apparently overlooks in this connection is the fact that the St. Louis consumer of coal gets just the same benefits from the group 2 adjustment as the East St. Louis consumer does, in so far as the ignoring of the difference in mileage and cost of service as between the near and far mines in the group are concerned; that is, the St. Louis consumer, at the St. Louis rate, can buy coal from the mine 82 miles away at the same rate of freight that obtains from the mine 8 miles away, just the same as the East St. Louis consumer, at the East St. Louis rate, can do. It is interesting to note also in this connection what the situation would be if the present arrangement of the mines in group 2 should be discontinued and the rates should be made on distance. Doubtless in that event the rate to St. Louis would continue to exceed the rate to East St. Louis by the amount of the charge for the added service, yet the complainant would not then be as well off as it is now with the mines grouped, because it could not then receive coal from all of the mines in group 2, regardless of the difference in distance, at a common rate.

The complainant asks why the cost of crossing the Mississippi River bridges and ferries between East St. Louis and St. Louis should not be disregarded the same as the difference in distance and cost of service between the near and far mines in group 2 is ignored. In this query the complainant apparently assumes that this disregarding of difference in distance on the part of the lines serving the farther mines is voluntary, whereas the fact is that it is due to the competition of the lines that serve the near mines in the group, which must be met by the other carriers if they are to participate in the Illinois coal traffic. No such competitive situation has been encountered as between the St. Louis and East St. Louis districts, which would tend to make a common rate to the two districts. Such a situation has, however, as already explained, been encountered on 61 per cent of the St. Louis coal, and has been yielded to by the east-side lines by their absorption of 13 cents a ton, the same as the similar competitive situation on the east side has been yielded to in the absorption of 10 cents a ton.

Nor have certain cases specially stressed by the complainant been denied careful consideration. In one of these, *Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co.*, 47 I. C. C., 287, the application of the same rate to East St. Louis as to St. Louis, on live stock originating in Missouri, was required because of a river-crossing situation not found in this case. The crossing of the Mississippi

River from the Missouri to the Illinois side, required in that case, was not always at St. Louis, as it is in this case, in crossing from the Illinois to the Missouri side, always through East St. Louis. By the Chicago & Alton the crossing is at Louisiana, Mo., 107 miles north of East St. Louis; by the Chicago, Burlington & Quincy at Alton, Ill., 20 miles north of East St. Louis; and by the St. Louis Iron Mountain & Southern and the St. Louis Southwestern at Thebes, Ill., 129 miles south of East St. Louis. By the Chicago & Alton and the St. Louis Southwestern the traffic is actually hauled across the river at Louisiana and Thebes, respectively, to the Illinois side, and then carried back across the river at East St. Louis when destined to St. Louis. A crossing of the Missouri River is also required to reach St. Louis by the Chicago, Burlington & Quincy, the Chicago & Alton, the Wabash, and the Missouri, Kansas and Texas. The latter must cross the river twice. The average haul in the live-stock case was shown to be from 150 to 175 miles. There was also, on the part of the representatives of St. Louis, not only no opposition to, but direct acquiescence in, the prayer of the East St. Louis interests in that case, and therefore no attempt to develop facts or argument that might possibly have tended to weaken the showing made by the complainant.

In *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, it was held to be unlawful to make a per-car charge in addition to the line-haul rate for the delivery of freight on an industrial siding after reaching Los Angeles, when the delivery was made by the line-haul carrier (but not when made by a connecting terminal), upon the principle that such sidings were a part of the line carrier's terminals, delivery on which was included in the line-haul rate. Here the question is not one of terminal delivery on industrial sidings after the coal reaches St. Louis, but is a question of the rate to St. Louis, which includes industrial-siding delivery. There was no contention in that case that the mileage was greater and the character of the service more expensive on the traffic delivered on industrial sidings than on traffic delivered on the line carrier's own rails, as there is here that contention as between shipments destined to St. Louis and to East St. Louis. As a matter of fact, on account of the independent terminal line competition in St. Louis described, the east-side lines here, in absorbing 13 cents a ton on approximately two-thirds of the coal tonnage of the entire St. Louis district, are really doing more than it was held the carriers were required to do in the case cited, where, as stated, the additional charge for delivering the car to an industry situated on a line other than the one that brought it into Los Angeles was not condemned.

In *Chicago, M. & St. P. Ry. v. Minn. Civic Asso.*, 247 U. S., 490, also particularly referred to by the complainant, it was clearly

pointed out that the service performed on shipments in Minneapolis, when delivered by the terminal road whose stock was owned principally by the line carriers, and whose charge for delivery was condemned, was not greater than the service performed on traffic which was delivered in that city by the line carriers on their own terminals. There was no finding or suggestion in that decision that the defendants in that case could not lawfully charge more for deliveries in one part of Minneapolis than in another part, whether on their own rails or on the rails of their jointly controlled terminal line, if a situation in respect of relative services similar to the one now being considered had been there shown to exist.

In the *New York Harbor Case*, 47 I. C. C., 643, also strongly urged, the Commission, in spite of its definite recognition of industrial New York, including a part of the state of New Jersey, as a single economic and manufacturing community, looked with approval upon a rate adjustment which, for short hauls, recognized the propriety of an additional charge for lighterage across the harbor. . As a part of that adjustment it was shown that for distances of not to exceed about 150 miles the rates, on both classes and commodities, to Manhattan and Brooklyn were higher, by the amount of the lighterage charge, and had been for years, than to Jersey City and other points on the New Jersey shore. Of particular interest in this connection are the rates on anthracite coal from the mines in the Scranton district of Pennsylvania to points bordering on New York harbor, which are shown by tariffs on file with the Commission to be from 50 to 70 cents a ton higher to Manhattan and Brooklyn than to Jersey City and Hoboken, for distances, over the direct line of the Delaware, Lackawanna & Western, ranging from 130 to 210 miles. It is but fair to say that, as a matter of fact, the *New York Harbor Case* supports the conclusion opposite to that of the complainant, and that it tends to justify the differential here in question, regardless of whether St. Louis and East St. Louis are to be regarded as together comprising but a single economic unit.

This case is not one to be decided on technical theories, but as a practical proposition of rate making, in which the interests, not only of the shippers of the St. Louis district, but as well those of the East St. Louis district, are to be carefully considered. East St. Louis is in a real sense located right at the door of the Illinois coal deposits, where its cost of transportation is favorably affected by the short distance from the mines, and by its location on the near side of a great river, and is entitled, within the reasonable limits of rate making, to all the benefits of that location. The two cities are in active competition with each other in the location of new industries. In addition to its lower rate on coal East St.

Louis has profited by its adequate and unusual water supply for manufacturing purposes, which can be obtained at a minimum cost from underlying sheets of water by merely pumping it through pipes driven into the ground. Each city has its advantages and its disadvantages, industrial and economic. These have all been fully discussed in the record and need not be repeated in detail in this report, where the question that is being considered is the propriety of the rate relationship between the two cities, under standards of transportation considerations rather than of civic rivalry. It must be recognized, however, that East St. Louis has a natural advantage of location over St. Louis with respect to this Illinois coal, of which it should be deprived by a readjustment of rates only upon a clear showing of justification. East St. Louis has grown rapidly in recent years, but there is no showing upon this record that this has been due to any maladjustment of the rates on this Illinois coal, at the expense of St. Louis, which has also made rapid progress industrially.

The soundness of what is understood to be the contention on which the complainant chiefly relies—that because of their membership in the terminal association the proprietary lines are required, as a matter of law and regardless of a material difference in extent and character of service, to make the same rate to St. Louis as to East St. Louis—can not be conceded. The weakness in this contention lies in the undue importance attached to the mere fact of a common terminal property and its operation as a unit. If this unit, by dissolution of the association and a division of its terminals among its members, were in the near future to be shredded out into separate terminals for each of the proprietary lines, the situation would not be essentially different from what it is now; yet the contention now made could not then reasonably be made that the relative services of the separate through lines from the mines to final points of delivery in St. Louis and East St. Louis would play no part in the respective rates to the two points. These proprietary lines have incurred no greater obligation from a rate standpoint by reason merely of their combination of terminals. The propriety of that combination under the antitrust laws has been passed upon by the Supreme Court of the United States in the case cited.

ATCHISON, Commissioner:

The foregoing portion of this report is, with minor changes, based upon the report proposed by our examiner and served upon the parties. Detailed exceptions thereto have been filed by the complainant. The defendants and interveners did not except. It is

not necessary to deal with the exceptions separately. They radiate from two points, on which complainant chiefly relies, one of fact, the other of law. There is a question of fact whether the East St. Louis and St. Louis rate districts, as now constituted, together comprise but a single industrial district. Complainant contends that as a matter of law the proprietary lines, upon reaching East St. Louis with St. Louis coal for transportation thence merely to another point in the unified St. Louis-East St. Louis industrial district, as defined by the complainant, and over terminals, which the complainant contends are merely a continuation of the proprietary lines' own rails, are prohibited from charging a higher rate for the transportation of the St. Louis coal than for the transportation of the East St. Louis coal. It is therefore, in effect, complainant's contention that a greater charge could not be made on the St. Louis coal than on the East St. Louis coal even if the transportation to both points were over the line of a single carrier from the mines to final destinations.

The clause of section 1 of the act which defines transportation as including terminal delivery is jurisdictional, and does not affect the measure of the rate, or relationship of rates, for the terminal service included within the transportation. This interpretation is reflected in our own action in cases previously cited wherein we prescribed higher rates to farther distant points in the Chicago switching district than to nearer points on the same lines in that district. The determination of the issue in such cases turns upon the relative services rendered under the respective through-rate units as a whole, including line-haul and terminal delivery, without necessarily separating the one from the other. In determining the relative service in this case the bridge service is an element, but is not the only element considered. As shown, the average distance and service to points in the St. Louis group from the mines in question exceeds the average distance and service to points in the East St. Louis group. The service under the through-rate unit on the St. Louis coal is, on the whole, substantially greater than the average service under the through-rate unit on the East St. Louis coal. This difference in service controls the present controversy, whether the facilities of the Terminal Railroad Association of St. Louis are viewed as those of a separate connecting carrier or as a continuation of the rails of the proprietary lines of that association, and whether the East St. Louis and St. Louis rate districts are treated separately or as together comprising but one industrial district. In the *New York Harbor Case*, *supra*, we held it to be not improper for the carriers to make the rate to New York higher than to Jersey City, on short-haul traffic such as

that involved in this proceeding, in view of the additional lighterage service across New York harbor, although we definitely recognized the two cities as together comprising a single industrial district.

Whether the decisions of the Supreme Court of the United States in *United States v. Terminal Railroad Association*, 224 U. S., 383, and 236 U. S., 194, prohibit the participation of the terminal association in joint rates with the carriers using its facilities, and the decree prohibiting the association from acting as a transportation company and from operating its properties "otherwise than as terminal facilities for the railroad companies using the same," is not decisive as to the reasonableness of the rates to St. Louis compared with the rates to East St. Louis. Whatever the form of tariff publication, the decree has not prohibited the terminal association from participating in the carriage of coal to St. Louis. The association was not dissolved by the court. Without the facilities of the terminal association the bulk of the traffic in coal and other commodities could not reach St. Louis. If the through rates from the mines to final points of delivery in St. Louis are found, as they are in this proceeding, to be reasonable and not unduly prejudicial, it is of small consequence here whether the association in the future takes care of its part of the through rate by continuing to participate in joint rates with the line carriers to East St. Louis or, in obedience to a requirement of the court decree cited, changes its form of tariff participation by naming its charge separately as a terminal charge.

It is contended that there is no reason for the difference in rates on coal from Indiana mines to St. Louis and East St. Louis, where the haul ranges from 161 to 229 miles, and the traffic, therefore, comes from beyond the 100-mile zone. But rates from the different groups of mines in Illinois and Indiana are made with relation one to the other, and any different adjustment to these destination points would disrupt a relationship which has long existed, and with no profit to the complainant. Only a small part of the St. Louis coal comes from the Indiana mines. As already shown, about 80 per cent comes from group 2 in Illinois, from which the weighted-average haul to East St. Louis is only about 24 miles. The rates from the Indiana mines are related to the rates from group 2.

It is further contended that St. Louis has the same rates as East St. Louis on all the important movements of raw material inbound, except on coal from mines in Illinois and Indiana. This is true only from points beyond the 100-mile zone, and then because on long-haul traffic the trunk line revenues are regarded as sufficient to enable the line-haul carriers to absorb the terminal charge, which consideration fails as to the short-haul traffic.

Upon all the facts of record we adopt the proposed report as modified as a part of this report, and find that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

WOOLLEY, *Commissioner*, concurring:

I concur in the majority findings because they embody the only sound disposition of this case upon the facts.

St. Louis is laboring under an economic handicap, due partially at least to a disadvantage of location as opposed to East St. Louis, on short-haul traffic from the east. The Mississippi River is a natural barrier, affecting the costs of transportation as between these respective communities, not easily to be overcome. Deliveries in East St. Louis are made without the use of expensive bridges as well as the additional terminal facilities on the west side of the river. So long as St. Louis is served by a privately owned terminal utility, representing a tremendous investment, it can scarcely expect its transportation costs on this traffic to be as low as those of East St. Louis.

The problem thus confronting St. Louis is one which, in my opinion, it must solve for itself. A solution in part at least, and perhaps the only probable one, lies in municipal ownership of the river bridges and west-side terminals. The acquisition of these properties would, of course, require a heavy expenditure, but the properties could be publicly operated at a less cost to the industries of St. Louis than they now pay. In my view many of our large trade and industrial centers must work out their own terminal problems, and only through ownership of terminals by the community governments themselves may this best be accomplished.

EASTMAN, *Commissioner*, dissenting:

While I agree with much that is said in the majority opinion, I am unable to concur in the result. It appears that St. Louis and East St. Louis, though separated by the Mississippi River and connected only by costly bridges or ferry service, are treated as one community for rate-making purposes and take the same rates on all traffic from and to points beyond a 100-mile zone, except in some instances on coal. Even within the 100-mile zone, live stock moves to both cities at equal rates from points west of the river, in accordance with our finding in the *Dimmitt-Caudle-Smith Case*; and there are several other like exceptions. The practical result, since traffic within the 100-mile zone other than coal is relatively unimportant, is that East St. Louis has the same rates as St. Louis on all im-

portant movements of manufactured products outbound, and on all important movements of raw material inbound except coal. On coal from the mines in Illinois and Indiana it has a substantial preference over St. Louis. Since coal is perhaps the most important raw material of all, the commercial advantage of this situation to East St. Louis is manifest.

In passing, it may be remarked that the theory approved by the majority does not support a difference in rates on coal from the Indiana mines, where the haul ranges from 161 to 229 miles. The more important question, however, is whether there is sufficient reason for the difference in the case of coal from the Illinois mines, which are within the 100-mile zone. Undoubtedly, the bridges or ferries add materially to the cost of transportation when the coal is destined to St. Louis. But this additional cost is the same whatever the length of the haul. The logic is not clear of a system of rates which draws around St. Louis a small, arbitrary circle and confines within its limits the use of a differential, especially when every now and then the rates are made equal regardless of the circle.

No process of rate making, of course, can avoid the transportation cost of the river crossing, and it must be borne by the traffic. The theory underlying the 100-mile zone seems to be that the higher rates for the longer distances can more easily be adjusted so that the cost may be spread or absorbed. But even on this theory, I fail to see a great deal of difference between rates on live stock for average distances of 150 to 175 miles and rates on coal for average distances of 25 to 50 miles. Nor, though the process is more readily perceptible, is it impossible to strike an average of the shorter-distance rates by which compensation may be secured for the cost incident to the river crossing without charging the two cities different rates. Apparently this is now done on live stock and certain other commodities. Regardless of distance, also, no differential is charged to parts of St. Louis which can only be reached, after the traffic crosses the river, by movement through an expensive tunnel. My judgment is that St. Louis and East St. Louis ought to be treated consistently as one community or consistently as two communities; that the majority opinion in this case is quite out of harmony with our opinion in the *Dimmitt-Caudle-Smith Case*; and that under all the circumstances of record it is unjust that East St. Louis should be given a preference, because it happens to secure most of its coal at near-by points, which it would not be given if the coal were a little farther away.

I am authorized to say that COMMISSIONER McCHORD joins in this dissent.

No. 11010.

THOMAS IRON COMPANY

v.

DIRECTOR GENERAL, AS AGENT, DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, ET AL.

Submitted March 5, 1920. Decided May 22, 1920.

Rate of \$1.30 per net ton on coke from Seaboard, N. J., to Hokendauqua, Pa., found not unreasonable. Complaint dismissed.

George W. Aubrey for complainant.

Arthur B. Hayes for intervener.

John L. Seager for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner. No exceptions were filed.

Complainant, a corporation, operates two blast furnaces at Hokendauqua, Pa., for the manufacture of pig iron. It alleges by complaint filed November 12, 1919, that the rate of \$1.30 charged on 103 carloads of coke shipped during September, October, November, and December, 1917, from Seaboard, N. J., to Hokendauqua, was unreasonable to the extent that it exceeded \$1.15. Reparation is sought. The Seaboard By-Product Coke Company, the consignor, intervened and offered evidence on behalf of complainant. As section 206(f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation to the Commission for causes of action arising prior to federal control, claims covering the shipments herein which moved more than two years prior to the filing of complaint are within our jurisdiction. Rates are stated in amounts per net ton.

The shipments moved over the lines of the Delaware, Lackawanna & Western Railroad, hereinafter termed defendant, to Phillipsburg, N. J., and the Central Railroad of New Jersey to Hokendauqua, a distance of 99 miles. They were delivered there to the Ironton Railroad for spotting at complainant's plant.

Prior to July 1, 1917, the rate from Seaboard to Hokendauqua was \$1.15. On that date it was increased 15 cents in common with other coke and coal rates in this territory. On November 26, 1917, it was reduced to \$1.15, and on June 25, 1918, under General Order No. 28 of the Director General of Railroads increased to \$1.60. The shipments made on or after November 26, 1917, and before June 25, 1918, which were charged a rate higher than \$1.15 were overcharged. Defendants should make prompt refund. The \$1.30 rate yielded earnings of 13 mills per ton-mile, and under a 30-ton loading, \$39 per car and 39 cents per car-mile.

As evidence of unreasonableness complainant relies primarily upon the short duration of the rate charged and its subsequent reduction to the old level. It cites for comparison, among others, a contemporaneous rate of \$1.15 on coke from Steelton, Pa., to Baltimore, Md., 88 miles.

Defendant denies that the reduction should be accepted as sufficient evidence of unreasonableness. It points out that the 15-cent increase was part of a general rate increase and that rates on coke from Seaboard to other furnaces in the same general territory were similarly increased, on the same date. It maintains that competitive conditions were chiefly responsible for the reduction and that the transportation service performed warranted the rate exacted.

From Seaboard to Bethlehem, Pa., 89 miles, the contemporaneous rate was \$1.30. Rates on coke from Camden, N. J., to points indicated, effective prior to June 25, 1918, which included the general increase in July, 1917, of 15 cents per ton, were as follows:

To—	Delivery.	Miles.	Rate.
Oxford Furnace, N. J.....	D., L. & W.....	102	\$1.45
Wharton, N. J.....	do.....	124	1.60
Bethlehem, Pa.....	C. R. R. of N. J.....	96	1.35
Catasauqua, Pa.....	do.....	104	1.55
Hokendauqua, Pa.....	do.....	107	1.55

Intervener's witness referred to the shipments as a "return load in empty cars," unloaded inbound at Seaboard. According to defendant's witness empty cars are supplied to intervener's plant from the Harrison yard, where practicable, and, when this supply is exhausted, from the Secaucus yard, distant from the plant at Seaboard about 3 and 3½ miles, respectively; and the shipments moved largely in cars so furnished. In the movement from the plant at Seaboard to Hokendauqua the cars are classified four times, namely, at Harrison yard, Secaucus yard, Port Morris yard, and Phillipsburg. Thus the transportation involves complicated switching movements through busy terminals in addition to a bridge haul at Northampton, Pa., and the spotting service at Hokendauqua.

The rate paid was not disproportionate to contemporaneous rates on the same commodity to certain other points in the same general territory. As we have frequently pointed out, the reduction of a rate is not of itself conclusive evidence of unreasonableness of the rate reduced. It does not appear that the rate assailed was excessive for the service rendered.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

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No. 10860.

CUYAHOGA VALLEY RAILWAY COMPANY

v.

DIRECTOR GENERAL, WHEELING & LAKE ERIE
RAILWAY COMPANY, ET AL.

Submitted March 1, 1920. Decided June 2, 1920.

Refusal of defendants to increase the amount of their absorption of complainant's switching charges on shipments between points on complainant's line and points of interchange with defendants' lines not found to be unlawful. Complaint dismissed.

C. M. Andrus for complainant.

Morrison R. Waite and *S. H. West* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

AITCHISON, Commissioner:

The issues here presented were made the subject of a report proposed by the examiner, and no exceptions were filed by the parties.

Complainant is a corporation engaged in the business of transporting property by railroad at Cleveland, Ohio, where its tracks connect with those of defendants Baltimore & Ohio Railroad and Wheeling & Lake Erie Railway. It receives from and delivers to said defendants freight in carloads originating at or consigned to points on their lines or the lines of their connections, for which service it makes a charge of \$3.50 per loaded car under tariffs lawfully on file with us. Defendants absorb \$1.40 of this charge, provided that the movement is entirely within the Cleveland switching limits. The balance, or \$2.10 per car, is borne by the shippers. Complainant contends that by reason of increased operating costs, the amount absorbed by the trunk lines, which complainant terms an allowance, is inadequate, and that the refusal of defendants to absorb a greater amount, or as complainant expresses it, to make an adequate allowance is unjust and unreasonable in violation of section 1 of the act to regulate commerce. We are asked to prescribe for the future an "allowance" of not less than \$2.75 per car, or such other "minimum allowance" as we may consider reasonable.

The early history of the Cuyahoga Valley Railway is set forth in the *Industrial Railways Case*, 29 I. C. C., 212, at page 301, and need

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not be repeated here. It was incorporated in 1905 and operates some 9 miles of tracks in and about the plant formerly owned by the Cleveland Furnace Company but now by the Otis Steel Company. Complainant owns the tracks and equipment, but the land on which the tracks are laid is leased from the Otis Steel Company. All shares of complainant's capital stock are owned by the steel company.

Complainant performs all switching between industries located on its line and the points of interchange with the connecting trunk lines. The only industry, other than the Otis Steel Company, mentioned in the record as being served regularly by complainant is the Semet-Solvay Company, which manufactures coke and its by-products in a plant located on land leased from the Otis Steel Company. A small amount of switching is performed at irregular intervals for other shippers, and occasionally cars are switched from one of the trunk lines to another. In addition to the interchange switching, complainant performs certain interplant switching between the plants of the Semet-Solvay Company and the Otis Steel Company, and a large amount of intraplant switching for the latter company. For each of these services complainant makes a charge of \$3.50 per car. In the case of the interplant and intraplant switching this charge is collected entirely from the industry served, but in the case of cars interchanged with the trunk lines and on which they receive a line haul only \$2.10 is paid by the consignor or consignee, the remaining \$1.40 being paid by the trunk lines.

A considerable amount of evidence was introduced by complainant tending to show that its operating costs have greatly increased since 1916, when the absorption of \$1.40 was first made. Before determining the effect of this evidence, however, it will be necessary to consider the character in which this complainant comes before us and the nature of the so-called allowance which it seeks to have increased.

The complaint itself and much of the evidence presented would seem to indicate that complainant is a common-carrier industrial line subject to the act. Complainant's secretary and treasurer testified as follows:

Q. * * * Is the Cuyahoga Valley operated as a plant facility or along the line of a common carrier?

A. It is operated as an entirely separate concern from the Furnace Company in every particular.

Q. In other words, the Cuyahoga Valley Railway Company has no connection whatever with the Cleveland Furnace Company or the Semet-Solvay Company?

A. It is an entirely separate concern. Its books are kept separately, and it pays its taxes separately and is maintained as a separate organization.

Complainant is incorporated as a common carrier, and makes reports to us. By its tariff on file with us it holds itself out to switch

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carload freight between "all points on its line" and connecting railroads at a charge of \$3.50 per car. Before filing this tariff it applied to and received authority from us to increase the former rate of \$2.50.

On the other hand, complainant, in its brief, takes the position that it is not a common carrier, but a mere plant facility, and that the so-called allowance is of the kind referred to in section 15 of the act.

In *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93, we said, at page 101:

* * * Sometimes, for competitive or other reasons, a trunk line will absorb the charge of a connecting terminal line for gathering freight originating on the latter to the rails of the trunk line. Manifestly such service of the terminal line is one performed for the trunk line and not for the shipper, and should be paid for by the trunk line and not by the shipper. While the trunk line may thus make such absorptions voluntarily, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission could compel the trunk line thus to bear not only the expense of the service of a connecting terminal line but the reasonable profit in addition which presumably will be included in the terminal carrier's rate. We are speaking now of a terminal line which is in all respects a carrier subject to the act.

Similarly, allowances are frequently made by the trunk line to an industry under section 15 of the act for services rendered by an industrial line owned by it or its stockholders, as for an instrumentality furnished by the shipper, the only concern of the Commission in such case being to satisfy itself that the allowances are not above the reasonable cost of the service and therefore are not indirectly a rebate of a part of the trunk line's charge to the owning industry through the medium of the latter's industrial railway. These allowances also are voluntarily made as for services performed by the shipper for the trunk line and it is not settled law that we can require them to be made by the trunk line any more than we can require the latter to absorb the published rate of the terminal carrier subject to the act, referred to.

It is to be observed that the only allegation made in this complaint of a violation of the act is that defendants' refusal to make an "adequate allowance" to complaint is unjust and unreasonable in violation of section 1. It is not clear from the record upon what theory the complainant would be benefited if we were to require the trunk lines to absorb a greater amount than now provided for in their tariffs. As above indicated, complainant now publishes in tariffs on file with us a charge of \$3.50 per loaded car interchanged with its trunk line connections either for delivery to plants located on its rails or cars loaded out from such plants. The trunk lines absorb \$1.40 of such charge. Assuming that the trunk lines would absorb \$2.75 of such charge, the complainant would not be benefited thereby, because under its published tariff it could exact from the shippers or consignees located on its rails but 75 cents. In other

words, the amount it would secure for its switching service would be the same, but the consignees or shippers would pay less and the trunk lines more. None of the shippers or consignees, however, are parties to the complaint, nor is complaint made that the rates paid by such shippers are unreasonable or otherwise unlawful. It follows, therefore, that the complaint must be dismissed.

No. 10640.

NATIONAL REFINING COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted February 21, 1920. Decided June 1, 1920.

Rates on petroleum and its products, in carloads, from Coffeyville, Kans., to Healdton, Okla., found to have been and to be unreasonable. Reasonable maximum rates on those commodities in tank cars prescribed for the future and reparation awarded.

Clifford Thorne and W. Y. Wildman for complainant.
T. J. Norton for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions were filed by the parties

Complainant is a corporation, operating an oil refinery at Coffeyville, Kans., for the manufacture of petroleum products from crude petroleum obtained from the so-called midcontinent oil field in Kansas and Oklahoma, and maintaining a distributing station at Healdton, Okla., for the marketing of its products. By complaint filed May 12, 1919, it alleges that the rates maintained by defendants on petroleum and its products, in tank cars, from Coffeyville to Healdton, for more than the preceding two-year period, were and are unjust and unreasonable in violation of section 1 of the act to regulate commerce, and on and after March 21, 1918, in violation of
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section 10 of the federal control act; and were and are, in their relation to certain other cited rates, unduly prejudicial to complainant and unduly preferential of competing shippers under the latter rates, in violation of section 3 of the act to regulate commerce; and that certain of the rates exceeded and exceed the aggregates of contemporaneous intermediate rates, in violation of section 4 of the act. The prayer is for reparation on shipments made within the two-year period and for reasonable and nonprejudicial rates for the future. Rates herein stated are in cents per 100 pounds.

In 1917, 1918, and 1919 complainant shipped from Coffeyville to Healdton upward of 30 box-car loads of refined petroleum products, in barrels, which it marketed in competition with the local refinery. During this period the rates applied to oil in barrels and in tank cars. Complainant expects that the future movement will be in tank cars, and the question of a rate for the future will be confined thereto.

Healdton is a local point on a short branch of the Oklahoma, New Mexico & Pacific Railway, about 31 miles west of Ardmore, Okla. The branch was constructed in 1917 from Ringling Junction, Okla., to afford an outlet for the Healdton oil field. Prior to September 15, 1917, on which date the branch was taken over by that line from the constructing contractor and the rates to Ringling Junction were extended to Healdton, the through rates included the contractor's charge of 5 cents for transportation over the branch. That charge must, of course, be disregarded; and as it was understood at the hearing, without objection by defendants, that as to that period the two points might be considered as one, the rates hereinafter shown up to the date named are those to Ringling Junction. Practically all of the shipments moved over the Atchison, Topeka & Santa Fe Railway to Purcell, Okla., the Gulf, Colorado & Santa Fe Railway to Ardmore, and the Oklahoma, New Mexico & Pacific Railway to destination, a distance of 374 miles. Various rates were charged, as follows:

	Cents.
Prior to September 15, 1917.....	70
September 15, 1917, to May 15, 1918, inclusive.....	50
May 16, 1918, to June 24, 1918, inclusive.....	71.5
June 25, 1918, and after.....	89.5

The 50-cent rate was the sum of a commodity rate of 35 cents to Ardmore and a fifth-class rate of 15 cents to Healdton. The rate of 70 cents was a joint fifth-class rate to Ringling Junction, and the two last named were successive joint fifth-class rates to Healdton. Each of the joint rates exceeded the sum of the contemporaneous local rates to and from Ardmore.

There are other available routes over the defendant lines, the shortest of which is via the Missouri, Kansas & Texas Railway to Oklahoma City, the Atchison, Topeka & Santa Fe Railway to Purcell, the Gulf, Colorado & Santa Fe Railway to Ardmore, and the Oklahoma, New Mexico & Pacific Railway beyond, the distance being 307 miles. Over these routes combinations of rates to and from Ardmore were and are applicable, as follows:

	Cents.
Prior to September 15, 1917.....	48
September 15, 1917, to June 19, 1918, inclusive.....	50
June 20, 1918, to June 24, 1918, inclusive.....	50. 5
June 25, 1918, to July 31, 1918, inclusive.....	63. 5
August 1, 1918, to April 19, 1919, inclusive.....	59
April 20, 1919, and after.....	51. 5

Complainant submits comparisons with other rates on refined petroleum in adjacent and other similar territory, with rates from Coffeyville to Healdton on other commodities, and with earnings on all traffic handled by defendants, as tending to establish the unreasonableness of the rates assailed. The unreasonableness of the present rates is admitted by defendants, who propose a rate of 44 cents. It is asserted for complainant that, measured by the rate in the opposite direction, the rate should not exceed 32 cents; measured by the percentage relations of the commodity and class rates from Coffeyville to Clinton, Okla., the rate should not exceed 33.5 cents; and, measured by the ton-mile earnings under the rate from Kansas refining points to Clinton, the rate should not exceed 35 cents.

At least, the parties agree that the rate may be fixed with reference to the decision in *National Petroleum Asso. v. M., K. & T. Ry. Co.*, 47 I. C. C., 355, though they differ in their modes of applying the standards therein prescribed. That case was similar to this in that it involved rates on petroleum and its products, in carloads, from 18 producing points in southeastern Kansas, including Coffeyville, to the following Oklahoma points: Bartlesville, Tulsa, Cushing, Drumright, Enid, Oklahoma City, and Clinton. Group rates from the producing points were established, based on the average short-line distances to the several Oklahoma points, varying from 12 to 26 cents and yielding ton-mile earnings ranging between 1.95 and 3 cents. The most remote point was Clinton, to which the average distance was computed at 267 miles and the rate fixed at 26 cents, producing ton-mile earnings of 1.95 cents. The present rate to Clinton, effective August 1, 1918, representing the general increase of 4.5 cents, is 30.5 cents, and the ton-mile earnings thereunder are 2.28 cents.

The average short-line distances from the Kansas producing points in the *National Petroleum Asso. Case, supra*, are 291 miles to Ard-
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more and 322 miles to Healdton. It is contended for defendants that, as the present commodity rate of 39.5 cents from Coffeyville to Ardmore is not assailed, it should be used as the basis of the rate to Healdton. For the average distance of 291 miles this rate produces a ton-mile revenue of 2.68 cents. Applying this figure for the 322 miles to Healdton and adding the 1-cent arbitrary provided by the Oklahoma distance rates, defendants arrive at 44 cents, which they contend would be a reasonable rate. But, apart from the fact that no presumption of reasonableness attaches to the Ardmore rate merely because it is not drawn in question in this case, defendants' proposition would make a rate relatively higher for the greater distance than the rate to Clinton. If the rate to Healdton is to be determined upon the principle of constant progression, the ton-mile revenue of 2.28 cents under the present rate to Clinton, based upon the rate fixed in the *National Petroleum Asso. Case*, would afford the fairer measure; and for the relatively short additional distance of 55 miles the result would not be anomalous. Applying this figure for 322 miles would produce a rate of 37 cents, equivalent to 32.5 cents prior to June 25, 1918, the difference representing the 4.5-cent general increase. Complainant concedes that it would be satisfied with a rate on the same ton-mile basis as the present rate to Clinton; and its proposed maximum of 35 cents is predicated on that figure, but applied to the short-line distance of 307 miles from Coffeyville. The appropriate factor is the average short-line distance from the 18 Kansas points, which would bring the Healdton rate more nearly into harmony with the group adjustment established in the above-cited case.

While it is true that there is in effect at present a rate of 32 cents from Healdton to Coffeyville and defendants admit that conditions are not materially different from those in the opposite direction, the record does not establish it as the maximum reasonable rate for the traffic in question. *Little Rock Freight Bureau v. M. P. Ry. Co.*, 51 I. C. C., 23.

The question of rates on petroleum and its products from the Kansas points to Oklahoma points had not been definitely settled prior to the decision in the *National Petroleum Asso. Case*, the order in which became effective April 15, 1918, and pending which the carriers postponed a readjustment of the rates here in question; and in that case reparation was denied. Upon all the facts of record we find that the rates assailed were, prior to April 15, 1918, unreasonable in so far as they exceeded the aggregates of the contemporaneous intermediate rates subject to the act; that from the latter date to June 24, 1918, inclusive, they were unreasonable to the extent that they exceeded 32.5 cents per 100 pounds; and that

on and after June 25, 1918, they were, are, and will be unreasonable to the extent that they have exceeded or may exceed 37 cents per 100 pounds. We further find that complainant made shipments as described and paid and bore the charges thereon; that it was damaged thereby in the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation accordingly, with interest. The amount of reparation due can not be determined upon the present record. Complainant should prepare a statement in accordance with rule V of the Rules of Practice. The alleged undue prejudice is not established.

An appropriate order will be entered, in compliance with which the defendants should observe the requirements of the fourth section of the act.

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No. 9461.

DE LAVAL SEPARATOR COMPANY

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted May 3, 1918. Decided June 1, 1920.

1. Ratings in official, western, and southern classifications and resulting rates on centrifugal cream separators, in carloads and less than carloads, not shown to be unreasonable *per se* or in comparison with the ratings and rates on agricultural implements, other than hand.
2. Ratings and rates on centrifugal cream separators, in boxes, not shown to be unreasonable in comparison with the ratings and rates on the same commodity in crates.
3. Rules applicable on straight carloads of agricultural implements, other than hand, and mixed carloads of agricultural implements, other than hand, and centrifugal cream separators, permitting stoppage in transit partly to unload and storage in transit not shown to be unjustly discriminatory. Complaint dismissed.

Cassoday, Butler, Lamb & Foster; William E. Lamb; Harry C. Kelly; and Karl D. Loos for complainant.

Samuel D. Snow for International Harvester Company of America; *W. J. Evans* for National Implement & Vehicle Association; *W. M. Hopkins* for Rock Island Plow Company, Acme Harvesting Machine Company, Associated Manufacturers' Company, and Renfrew Machinery Company, Limited; *P. W. Dougherty* for Board of Railroad Commissioners of South Dakota; *E. H. Scott* and *Walter Condron* for State of Iowa and Iowa Board of Railroad Commissioners; *H. D. Caster* for Kansas Public Utilities Commission; *A. R. Keeler* and *W. L. Derry* for Illinois Implement and Vehicle Dealers' Association; *H. D. Skinner* for Western Retail Implement, Vehicle and Hardware Association; *John G. Gage* and *C. I. Buxton* for Minnesota Implement Dealers' Association; *W. D. Burdick* for Associated Manufacturers' Company; and *F. R. Seberthall* for Wisconsin Implement & Vehicle Association and National Federation Implement & Vehicle Dealers' Associations, interveners.

Kenneth F. Burgess and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company; *C. B. Ackerman* for Chicago & North Western Railway Company; *R. C. Fyfe* for western classification lines; *Parker McCollester*, *D. P. Connell*, *F. W. Smith*, and *J. W. Allison* for official classification lines; and *William Burger* for southern classification lines.

REPORT OF THE COMMISSION.

Division 2, Commissioners Clark, Daniels, and Woolley.

WOOLLEY, *Commissioner*:

The complaint in this case, filed by a corporation engaged in the manufacture of centrifugal cream separators and other centrifugal machines, such as emulsors, varnishing machines, oil-reclaiming machines, and milk clarifiers, with its principal plant at Poughkeepsie, N. Y., alleges that the carload and less-than-carload ratings in the official, western, and southern classification territories on centrifugal cream separators and the rates applicable thereunder are unreasonable *per se* and as compared with the rates on agricultural implements, other than hand; that the ratings and rates on centrifugal cream separators, in boxes, are unreasonable as compared with the ratings and rates on centrifugal cream separators, in crates; that the provisions maintained by certain of the defendants in western classification territory permitting mixed carload shipments of centrifugal cream separators and agricultural implements, other than hand, at the rate and minimum weight applicable on straight carloads of agricultural implements, result in unjust discrimination and undue prejudice; that similar mixing rules maintained on intrastate traffic in the states of Illinois, Iowa, Nebraska, Kansas, Minnesota, South Dakota, North Dakota, and Wisconsin result in undue prejudice; that the western classification provision permitting mixed carload shipments of centrifugal cream separators and internal-combustion engines at the class A rating and minimum weight of 24,000 pounds results in undue prejudice to complainant; and that the rules maintained by certain of the defendants permitting stoppage in transit partly to unload and the storage in transit of straight carloads of agricultural implements, other than hand, and mixed carloads of centrifugal cream separators and agricultural implements, other than hand, are unjustly discriminatory and unduly prejudicial.

It should be borne in mind that since this complaint was filed and heard substantial changes have taken place so far as the classifications are concerned. The three territorial classifications have been consolidated into one issue and many of the rules, packing requirements, and ratings have undergone changes.

Several state commissions, manufacturers of agricultural implements and cream separators, and associations of implement dealers intervened, all in opposition to the cancellation of the mixed carload rules, and some in opposition to lower ratings or rates on separators, boxed, than on separators, crated, and to the cancellation of the transit rules permitting storage and stoppage partly to unload. Rates are stated in cents per 100 pounds. When agricultural imple-

ments are referred to herein the term will be understood to apply to agricultural implements, other than hand.

Centrifugal cream separators, hereinafter termed separators, are machines used at creameries, milk stations, and on farms, to separate cream from milk by a centrifugal process. There are two types, one operated by motive power and the other by hand. The latter may, by a few simple attachments, be made capable of operation by power, and while only a very small percentage is originally sold with such attachments it appears that ultimately a majority of the hand machines are operated by power, usually by gasoline engines. The power separators, which constitute less than 1 per cent of the present output, are much larger and more valuable than the hand separators, but the classifications make no distinction between them.

Separators are rated under the caption "machinery and machines" as follows:

	Official.		Western.		Southern.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
In boxes.....	2	1 5	2	1 A	2	1 6
In crates.....	2	1 5	1	1 A	2	1 6

¹ Minimum, 24,000 pounds, subject to graduated scales dependent upon size or capacity of cars used.

In the official classification the first specific item on separators was published in 1904, and provided first class for less than carloads, and fifth class, minimum 24,000 pounds, for carloads. Various manufacturers applied for reductions in both the carload and less-than-carload ratings and the latter was reduced to second class on July 1, 1914, since which time no complaint against the ratings other than that here in issue, has been received. The southern classification originally provided, in 1905, an any-quantity rating of second class, except when not packed or when s. u. packed, and on November 1, 1912, a carload rating was established. In the *Consolidated Classification Case*, 54 I. C. C., 1, it was recommended that an increase in this carload rating from sixth to fifth class be made, but for reasons which need not be stated here, we did not indorse the recommendation. In western classification territory the present ratings have been in effect since 1915, when the rating on separators, boxed, was reduced from first to second class upon application of complainant.

REASONABLENESS OF THE RATINGS AND RATES.

There is no competition between separators and agricultural implements and complainant does not contend that there should be a fixed rate relationship, its position being that separators packed in boxes

are safer and better traffic than agricultural implements; that the weight per cubic foot is greater and the average loading heavier; that the movement of separators is substantial and regular; that the hazard is negligible; that the absence of risk makes the question of value unimportant; that separators require only the minimum amount of service, no greater than is required for agricultural implements; and that, considering all of the transportation conditions, the rates on separators, boxed, should be lower than the rates on agricultural implements. It asks for commodity or class rates on separators, boxed, both in carloads and in less than carloads, somewhat lower than the commodity or class rates on agricultural implements from and to the same points, but is willing to accept in connection with the lower carload rates a minimum of 36,000 pounds, provided there are also maintained rates the same as the present rates on agricultural implements, with the present minimum of 24,000 pounds. Complainant ships in carload lots from Poughkeepsie to numerous distributing houses maintained by it in the east, south, and west, but mostly in the west. The separators are distributed in less-than-carload lots from the branch houses, and complainant's principal interest as to the carload rates is in those from Poughkeepsie to distributing points east of the Mississippi River and from the Mississippi River to distributing points west thereof.

On agricultural implements, in carloads, the classification ratings and the minimum weight are generally the same as on separators. Formerly implements were subject to a minimum of 20,000 pounds in the southern classification while in the western the minimum on implements was not, except in a few instances, subject to the graduated scale. In the consolidated classification the 24,000-pound minimum, subject to the graduated scale, was made applicable to agricultural implements generally, following our recommendations in the *Consolidated Classification Case, supra*. The less-than-carload ratings on implements vary, but the predominant ratings for implements, k. d., are third class in the western and southern classifications, and rule 25, or 15 per cent lower than second class, in official. In all three territories the great majority of the agricultural implements, s. u., are rated double first class or first class.

There are a number of instances in which agricultural implements, in carloads, are accorded commodity rates lower than the classification basis. From Poughkeepsie there are commodity rates on implements to points in the west which are, in so far as the particular rates cited of record are concerned, from 2.5 to 8 cents lower than the class rates, with a minimum of 24,000 pounds. The official classification lines explain that these rates were established by the New York

Central Railroad Company for use by an implement manufacturer at Poughkeepsie in order partially to meet the rates established by the Boston & Maine Railroad Company from Hoosic Falls, N. Y., at which point there is a large agricultural implement factory, and were made approximately 2 cents over the class rates from Albany, N. Y., which point takes the same rates as Troy, N. Y., westbound. Hoosic Falls normally takes Boston rates westbound, which are the same as the New York rates, also normally applying from Poughkeepsie, but the Boston & Maine established rates on agricultural implements, westbound, from Hoosic Falls on the basis of the Troy rates, which are lower than the New York rates. Complainant insists that the same reason exists for reducing the rates on separators from Poughkeepsie in order partially to meet the rates from Little Falls, N. Y., a separator-manufacturing point, which takes the same fifth-class rates westbound as Albany.

There are also commodity rates lower than the class rates, from Ohio River crossings and from Philadelphia, Pa., and Philadelphia rate points into southern classification territory on a limited list of agricultural implements. The southern classification lines explain that the rates from Ohio River crossings were established because of competitive conditions resulting from the manufacture of agricultural implements in the south, and suggest that the rates from Philadelphia and Philadelphia rate points were established to equalize the rates from the crossings.

Complainant asserts that there are numerous instances in western trunk line territory of commodity rates on agricultural implements, in carloads, lower than the class rates, but the only instances cited of record are rates from Chicago and Rock Island, Ill., to La Crosse and Superior, Wis.; Winona, St. Paul, Minneapolis, and Duluth, Minn.; Hutchinson, Coffeyville, Wichita, Arkansas City, and Belle Plains, Kans.; Grand Island and Kearney, Nebr.; and Joplin, Mo. It was not shown that in western trunk line territory commodity rates lower than the class rates predominate on agricultural implements, in carloads, and defendants assert that many of the commodity rates have been canceled and but comparatively few remain.

The complaint alleges that separators move steadily throughout the year and therefore furnish a regular and uniform tonnage to the carriers, while the largest volume of agricultural implements moves during a small portion of any given year. No substantial evidence was introduced in support of these allegations. Witnesses for interveners testified that the movement of separators was greatest in the fall and spring months, while agricultural implements move in uniform volume throughout the year for the reason that different implements are required by farmers during different seasons and the seasons vary in different localities.

There is much evidence of record concerning transportation conditions covering the movement of cream separators, as compared with agricultural implements. It is shown that the weight per cubic foot of the separators is heavier and the average loading greater, and that there is no difference in the hazard or in the service or equipment required in the movement of these commodities. The value of agricultural implements is much lower than that of separators, while the volume of movement is greater; in fact, it may be said that the movement of separators as compared with that of agricultural implements is negligible. These differences are of sufficient importance to have justified the establishment of commodity rates on agricultural implements between certain points without taking the separators out of the classification. Complainant concedes that separators are properly grouped with machinery and machines, and its contentions with respect of the alleged impropriety of a mixture of separators with agricultural implements are all opposed to its contention that the rates on the implements should be used as a measure of the reasonableness of the rates on cream separators.

BOXES v. CRATES.

Complainant takes the position that the weight density of separators packed in boxes is greater than that of separators in crates, and that the box is a safer package. For these reasons it insists that separators, in boxes, should be rated at least as low as third class in less than carloads, and in carloads should take rates at least 10 per cent lower than the carload rates on separators in crates. It suggests that the distinction between the carload rates might be maintained by establishing a minimum of 36,000 pounds in connection with the lower commodity rates asked, as separators in crates can not be loaded to that weight in a standard box car.

Complainant's machines are taken apart to a certain extent and packed in substantial boxes made of seven-eighths inch dressed pine, tongued, grooved, and glued, separate compartments being provided for the parts. Other manufacturers represented at the hearing also pack their separators in boxes. The International Harvester Company, hereinafter called the International, uses a substantial crate, the machines being packed in excelsior, wrapped in heavy paper, and securely braced within the crate. Certain parts are packed in a fiber box fastened within the crate. The evidence shows that the claims for loss and damage filed by complainant and the International are negligible. A representative of the latter concern testified that his company had formerly used boxes, but on account of greater economy had adopted the crate and had found it sufficiently safe. A member of the Official Classification Committee testified that his committee had come to the conclusion that the crate was as

safe a container for separators as the box, and therefore, in accordance with its established practice, made no distinctions in the ratings. The testimony of a member of the Southern Classification Committee was to the effect that it was the opinion of his committee that a crate represented no greater hazard than a box in the transportation of separators. The chairman of the Western Classification Committee, hereinafter termed the western committee, testified that his committee had decided, based upon the testimony of various manufacturers, that the box was a better package than the crate and entitled to a lower rating.

Although exhibits illustrating the methods of packing indicate that the difference in weight density is due to a certain extent to the more compact manner in which complainant's separators are packed, it is not shown to what extent, if any, it is due to a difference in the weight density of the machines themselves. The average per car loading of the International's machines is substantially less than the average loading of complainant's machines, but more nearly approximates the average loading shown of record for the shipments of other manufacturers who pack their separators in boxes. In all three classifications, with but few exceptions, the articles in the machinery and machines group are rated the same in crates as in boxes.

MIXTURE WITH AGRICULTURAL IMPLEMENTS.

At the time of the hearing the provisions permitting the shipment of agricultural implements and separators in mixed carloads prevailed throughout western trunk line and trans-Missouri territory and on intrastate traffic in Illinois, Iowa, Nebraska, Kansas, Minnesota, South Dakota, North Dakota, and Wisconsin.

Under the official classification mixtures were provided by the application of rule 10 of that classification, so that, generally speaking, any articles provided in the classification could be shipped in mixed carloads at the highest rating provided for any article in the shipment and at the minimum attached to that rating. It was asserted of record that the feature of the mixing provisions in western classification territory most objectionable to complainant would be eliminated by the application of a rule made on the basis of rule 10 of the official classification.

The question of a rule to govern ratings and rates on commodities shipped in mixed carloads was discussed in the *Consolidated Classification Case, supra*. We there recommended to the Director General a uniform rule providing that articles having a carload rate or rating may be shipped in mixed carloads at the carload rate applying on the highest-rated article and subject to the highest minimum weight attaching to any article in the load. Our recommendation was accepted in part and the consolidated classification contains a

rule providing for mixtures at the highest carload rating and the highest minimum applicable to any of the articles in the carload, so far as western and southern classification territories are concerned. It includes articles taking commodity rates so far as official classification territory is concerned.

By Freight Rate Authority No. 14,321 of September 22, 1919, as amended, the Director General authorized the cancellation in western territory of the application of agricultural-implement commodity rates on separators, cream or whey, in mixed carloads with agricultural implements, with the result that the class A rates are applicable on this mixture. Following this, and prior to January 1, 1920, applications for permission to make the same cancellation were filed on behalf of various roads not under federal control. The effect of these cancellations is to satisfy that part of the complaint which alleges undue preference of the mixture referred to and undue prejudice and disadvantage to straight carloads of separators.

MIXTURE WITH ENGINES.

In the western classification the item covering centrifugal cream separators carried a note providing that internal-combustion, alcohol, gas, or oil-burning engines may be loaded in mixed carloads with cream separators at class A, minimum 24,000 pounds, subject to rule 6-B, which are the rating and minimum weight applicable on straight carloads of either separators or engines. Complainant contends that this mixture is productive of undue prejudice in that by its use one or two preferred manufacturers are enabled to ship cream separators in less-than-carload quantities at carload rates, and it maintains that the rule is unlawful and should be eliminated for the same reasons as advanced against the mixture of cream separators and implements; that gasoline engines and cream separators are totally independent and unrelated articles of traffic; that the manufacture, distribution, and sale of each is an entirely separate and distinct line of business; and that there is no general commercial need for the mixture, which was established in response to one or two isolated requests of unusually situated manufacturers. The chairman of the western committee testified that the mixture was first permitted under a provision relating to creamery outfits in western classification No. 5, effective January 10, 1889; that the specific mixture of gasoline engines and separators was established upon the application of manufacturers of both separators and engines, and at the time no objection was made thereto by shippers; that power types of separators are useless without an engine of proper size to drive them, and inasmuch as the hand type may also be equipped for use with power, an engine is a proper part of the equipment; and he maintains that the rule is reasonable, does not result in discrimination, and is in accordance

with the findings of the Commission on mixtures of machinery and motive power and on carload mixtures in general as expressed in the *Western Classification Case*, 25 I. C. C., 442. Complainant submitted no substantial evidence to show that this mixture, which is now permitted under rule 10 of the consolidated classification, had resulted in any appreciable disadvantage to it.

STOPPAGE AND STORING IN TRANSIT RULES.

In northwestern territory the Great Northern, Northern Pacific, and Minneapolis, St. Paul & Sault Ste. Marie railways permit stoppage in transit partly to unload and storage in transit on straight carloads of agricultural implements and on mixed carloads of implements and separators, with charges of \$5 per car for each stop to unload and 1 cent per 100 pounds, minimum \$5 per car, for storage in transit. In western trunk line exceptions a similar rule with a like charge obtains with respect to stoppage in transit partly to unload. It is stated that the rules provide for the application on such shipments of the through agricultural implement rate and minimum weight from point of origin to final destination, which would in some instances result in lower charges than on straight carloads of separators. Complainant has never asked for and does not now seek the application of similar rules on straight carloads of separators. Its position is stated as follows:

Complaint is made because the shipment of mixed cars into a transit point enables the delivery of centrifugal cream separators to that transit point or to a final destination at a considerably less rate than a similar shipment in a straight carload from the same point to the same destination.

Its case, therefore, with respect to these transit services stands on the same ground as with respect to the mixture of implements and separators. On behalf of the Chicago, Burlington & Quincy it was stated that if the transit rules are discriminatory that carrier has no objection to the establishment of similar rules on straight carloads of separators. Complainant submitted no evidence showing any actual disadvantage suffered by it because of these transit services.

CONCLUSIONS.

Upon the facts of record we find that the ratings and rates on centrifugal cream separators in carloads and less than carloads are not shown to be unreasonable *per se* or in comparison with the ratings and rates on agricultural implements other than hand; that the ratings and rates on separators in boxes are not shown to be unreasonable as compared with the ratings and rates on separators in crates; and that the mixed-carload rules and the rules permitting stoppage in transit partly to unload and storage in transit do not result in unjust discrimination. The complaint will be dismissed.

No. 10548.
UNITED STATES CAST IRON PIPE & FOUNDRY
COMPANY, INCORPORATED,
v..
DIRECTOR GENERAL AND PENNSYLVANIA RAILROAD
COMPANY.

Submitted February 25, 1920. Decided June 1, 1920.

On complaint that the allowance to complainant for spotting cars within its plant at Burlington, N. J., is inadequate, *Held*: Without passing upon our power to order an increased allowance, that complainant has not demonstrated the propriety of an increased allowance for the spotting service in question. Complaint dismissed.

Evans Browne and Britton & Gray for complainant.

George Stuart Patterson and Lemuel B. Schofield for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by the complainant, but argument was waived.

The complainant owns and operates 12 plants for the manufacture of cast-iron pipe, pipe fittings, castings, and like products, one of which is at Burlington, N. J. It alleges that formerly it was customary for the Pennsylvania Railroad Company, hereinafter termed the defendant, with its engines to switch cars to and from the usual places for loading and unloading upon the industrial tracks of complainant's plant at Burlington without any charge in addition to the line-haul rate; that for some years prior to June 1, 1917, the complainant, with its own power and at its own expense, rendered the customary interchange switching and spotting service on interstate traffic without allowance therefor; that since June 1, 1917, defendant has made an allowance to it for this service at the rate of 76 cents per car; that such an amount is insufficient and materially less than the actual cost properly chargeable to such service; that defendant has been and is rendering an interchange switching and spotting service without cost in addition to the line-haul rates to others similarly situated in the Philadelphia rate district; and

that by reason of these facts complainant has paid rates which were unreasonable, unjustly discriminatory, and unduly preferential, in violation of sections 1, 2, and 3 of the act to regulate commerce. Reparation is asked and an order requiring defendant "to pay an adequate and sufficient allowance to complainant out of the prevailing Philadelphia district rates for the interchange switching and spotting service performed by it, as incidental to interstate transportation."

The plant at Burlington is on the Delaware River and abuts on the defendant's right of way. It is within the Philadelphia rate district. It covers, including the plant railroad tracks, approximately 82 acres and is intersected by a public highway. Within the plant are about 40 structures, among which are foundries, machine shops, and storage houses, and about 10,500 feet of standard-gauge track, which, in at least one instance, extends through a building. There is also a system of narrow-gauge track intersecting at a few places the standard-gauge track. The complainant has one standard-gauge locomotive, which is used for both interchange and intraplant switching, and also several locomotive cranes, which at times also operate over the standard-gauge tracks. The narrow-gauge cars are operated by hand power. The intraplant trackage is connected with the trunk line by a spur known as track No. 5, which is about 800 feet long. The spur connects with an interchange track located on defendant's right of way and having a capacity of about 25 cars. Inbound cars are placed by defendant's motive power on the interchange track and, when this is full, on the track of complainant, designated No. 5. Complainant's engine pulls the cars back to "a point beyond the switch point near the scale," on track No. 5, classifies them "over the various Pipe Company tracks," and then moves them to the designated places of loading or unloading. Outbound cars are loaded at designated places within the plant and are moved by complainant's engine over the track which leads by the scales to the connection with defendant's line and placed on the interchange track. In some instances an inbound car is only partially unloaded at one place and is then moved by complainant's power to another unloading point for the completion of unloading. At times a car which has been unloaded is switched by complainant's engine to a place of loading to be employed in an outbound movement.

The principal inbound commodities are coal, coke, pig iron, scrap iron, limestone, and sand. The coal and coke originate in western Pennsylvania and West Virginia; the pig iron in eastern, central, and western Pennsylvania, and in New York, New Jersey, and Alabama; the scrap iron, limestone, and sand at various places. The

outbound products—pipe, pipe fittings, and castings—are shipped generally to trunk line territory.

The defendant, prior to 1911, rendered the spotting service with its own equipment and without charge in addition to the line-haul rate. Since that time the complainant has performed spotting service as above described with its own motive power. Since June 1, 1917, it has received from the defendant a maximum allowance of 76 cents per car based on cost data submitted for 1915. This amount, it insists, is insufficient in that it does not cover the actual cost to it of performing the service. An exhibit filed by complainant consists of copies of monthly "statements of switching service performed" made by it to the defendant from June, 1917, to May, 1919, both inclusive. In the statement of June, 1917, such costs per loaded car as are considered total 83.77 cents; in December, 1917, the cost is shown as \$1.69; in June, 1918, as \$1.49; and in May, 1919, as \$3.67. Another exhibit filed by complainant shows the "average interchange switching cost per car" at complainant's plant from June 1, 1917, to May 31, 1919, as \$1.36. The increase in these switching and spotting costs was due principally to increased cost of labor and supplies. For example, in June, 1917, the defendant's engineman received pay at the rate of 32.3 cents per hour; the brakeman at 22.3 cents per hour; the scale man, at 23 cents per hour, while in May, 1919, the engineman received 60 cents per hour; the brakeman 43.3 cents per hour and the scale man 41.2 cents per hour.

Complainant also shows the rates in effect from June 1, 1917, to June 1, 1919, on cast-iron pipe and fittings in carloads from Burlington to representative markets, such as Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to which complainant ships extensively. Generally speaking, during this period the rates were increased by 15 per cent in 1917 and 25 per cent in 1918 under the general increases authorized by the Commission and the Director General.

The price of complainant's standard products delivered at New York City in 1916 was about \$30 per ton of 2,000 pounds. The price increased during 1916 and 1917 until it reached \$65 or \$70 per ton. In the latter part of 1917 the government established a price of \$49 per ton at Birmingham, Ala., which was considered as a base point. This resulted in a price at New York of about \$57 or \$58 per ton. The complainant's witness testified that at present there is open-market competition and that the price at New York is \$50 to \$55 per ton.

At Emaus, Pa., a point on the Philadelphia & Reading Railway within the Philadelphia rate district, is the Donaldson Iron Company, which manufactures the same kind of pipe and fittings as com-

plainant and competes with complainant in practically all markets reached from the plant at Burlington. To typical points in representative consuming territory the rates from Emaus are the same as from Burlington. At the plant of the Donaldson Iron Company the Philadelphia & Reading Railway renders all the interchange switching and spotting with its own equipment without charge in addition to the line-haul rate. Interchange switching and spotting is performed by the defendant or, during federal control, by the Baltimore & Ohio Railroad for account of the defendant, at the plant of E. I. Du Pont de Nemours & Company, Harrison Works, Grays Ferry (Philadelphia). At the two yards of the Atlantic Refining Company in Philadelphia, one reached by the defendant and the Baltimore & Ohio and the other by the defendant, interchange switching and spotting is performed by the trunk lines without charge in addition to the line-haul rate. At the two plants of the Edward G. Budd Manufacturing Company in Philadelphia, the defendant renders interchange switching and spotting service without any charge in addition to the line-haul rate. At the plant of the Thomas Devlin Manufacturing Company at Burlington the defendant renders interchange switching and spotting service without any charge in addition to the line-haul rate. There is no evidence as to the extent and nature of the spotting service rendered at these various industries except that it is stated that the Atlantic Refining Company has a very extensive system of tracks. With the exception of the one at Emaus the products of these industries are not in competition with those of complainant's plant at Burlington.

In April, 1914, following our report of January 20, 1914, in *Industrial Railways Case*, 29 I. C. C., 212, all allowances for interchange switching and spotting were discontinued by the carriers in trunk line and central freight association territories. In April, 1915, allowances to the Union Railroad Company of Pittsburgh, the Monongahela Connecting Railroad, the Newburgh & South Shore Railroad, the South Buffalo Railway Company, and the Lake Terminal Railroad were reinstated. In April, 1916, a general accounting committee was created for receiving the applications of industries or of industrial railroads for allowances, to be transmitted through the traffic officials. A subcommittee was appointed to deal with each particular case. On the recommendation of this committee allowances were granted. The basis considered by the committee for an allowance to a common carrier differed from that for an allowance to a plant facility. As to the latter, the general accounting committee in arriving at the average cost considered only the transportation cost, which included the wages of the crew, coal,

oil, waste, repairs to locomotives, 5 per cent depreciation, and 5 per cent interest on the original cost of the locomotives.

Defendant filed an exhibit showing common carriers and industrial railways in eastern trunk line and central freight association territories, embracing 14 common carriers and 64 plant facilities, to which allowances are paid by trunk lines. In all but four instances the allowances are based on costs of 1915 or 1916; in three of these four instances the period covered by the data submitted extended into 1917, and in one extended over the four years ended December 31, 1914. The amounts of these allowances are stated "per car" and "per ton." For a plant facility the amount per car ranges from 47 cents to \$2.89, and the amount per ton from 1.1 cents to 4.8 cents.

Other exhibits filed by defendant show the following: (a) A list of 176 industries on the Pennsylvania Railroad, Eastern Lines, which do all of their spotting without any allowance. In this list appear industries at Bristol, Pa.; Camden, N. J.; South Camden, N. J.; Eddystone, Pa.; Philadelphia, Pa.; Roebling, N. J.; and Trenton, N. J. (b) A list of 12 industries on the Pennsylvania Railroad, Eastern Lines, which do part of their spotting without allowance therefor. (c) A list of 4 industries, 2 in Pennsylvania and 1 in New Jersey on defendant's line, and 1 in New Jersey on the Central Railroad of New Jersey, which do their own spotting without allowance therefor. The products of these 4 are given in the exhibits as cast-iron pipe and special castings, and complainant admits that 2 of them, at least, are its competitors. (d) A list of 21 industries reached by the Pennsylvania Railroad, Eastern Lines, to which no allowances have been paid but which have made application for allowances.

It thus appears that on the line of defendant the granting of allowances to industries for the use of their plant facilities is the exception rather than the rule, and that where allowances are paid they are with few exceptions on the same basis as that of complainant—the 1915–1916 basis of cost.

It does not affirmatively appear why the defendant discontinued the spotting service with its own equipment. So far as the record shows, the complainant has not requested the defendant to perform the spotting service in question nor signified its willingness to permit defendant to do so with its equipment. To render with its own equipment all the transportation service which it is obligated to perform, if it so desire, is defendant's unquestionable right.

A carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. The nature and extent of delivery of carload traffic has differentiated with the increasing complexity

in the development of industrial enterprise. Perhaps the most common, if not the standard, form of delivery for carload freight is the setting of a car on the so-called team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and a substitute for team-track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main track. It is indisputable that the trunk line carrier may be required to perform these or equivalent services of delivery without charge in addition to the transportation rate, or, if it choose, may employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable.

With the rapid growth of many industries and their extension over large areas, the places for the discharge of inbound freight and the loading of outbound goods have receded farther and farther within the plants and from the rails of the trunk lines. Facilities became necessary to transport materials or partly manufactured articles from one point within the plant to another and there grew up, primarily for the convenience of operation of the industries, a system of tracks on their private property over which, in many instances, they employed their own cars and motive power. Where the trunk line attempted with its motive power to continue the carriage to the designated place of unloading, increasingly distant from the trunk line, and involving greater and greater service, it became less and less practical for its engines to operate within the plant. The next step was a natural consequence of the physical situation. The increase in the service, particularly in the great industrial centers, was rarely attended by an increase in the transportation rate of the carrier by reason of the larger spotting service. Frequently the industry, finding that the operation of the carrier's locomotives embarrassed intraplant activities, and the carrier, no longer wishing to continue with its own engines a service which had become so complex, mutually agreed that the motive power of the industry should be employed in the accomplishment of the spotting and in certain cases that reimbursement should be made for this use of equipment. In most instances the great majority of shippers, in the same immediate locality—as in the Philadelphia rate district—continued under the same transportation rate to receive an average delivery service.

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate, is important evidence that

the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. The customary practice generally as to carload traffic, the customary delivery service extended to the rank and file of industries in the same general district, the customary delivery service rendered to the rank and file of competing industries in the same general district, the customary delivery service rendered to competing industries in the same rate group under the same transportation rates, involving practically the same line-haul service, these are considerations pertinent to the determination of what constitutes a reasonable delivery service and the carrier's legal obligation in a particular instance. However, in testing the extent of the carrier's legal obligation as to the delivery of carload freight, two circumstances are entitled to primary consideration. One is the extent of the service involved in a typical team-track delivery; the other, the extent of the service rendered in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery.

Wherever a particular delivery service—spotting at some place of unloading within a plant—properly may be construed as the equivalent of either of these two services, and the rendition of such service practical, we may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude of the service becomes greater than the equivalent of team-track delivery or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. To comply with this legal obligation, as pointed out above, the carrier may employ the owner of the property transported and pay a compensation or allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render.

The showing of complainant is uncontradicted of record that the actual cost to it of taking cars from the interchange track, or from track No. 5 within the plant, and spotting them at the places of unloading is not at present covered by the amount of the allowance which has hitherto been paid. However, it is not satisfactorily established that the legal obligation of the defendant goes to the extent of requiring it to spot the cars at the places of unloading or

to take the cars from the places of loading within the plant. The obligation as to delivery may have been complied with when the cars are placed on the interchange track or on the spur within the plant connecting with the interchange track. The transportation rates paid by complainant are the same as those applicable to the Philadelphia rate district generally. Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive either team-track delivery or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such industry, or that the line-haul rates have been rendered unreasonable or otherwise unlawful by the withdrawal of the spotting service by the line-haul carrier or its failure to reimburse the industry for the entire cost of the spotting service which the latter performs. Complainant's case is presented on the theory that the sole issue is the adequacy of the allowance voluntarily made by the defendant to cover the cost of the interchange switching and spotting service performed by complainant with its own power. But, as above shown, the determination of that issue necessarily involves the question of whether the service for which the increased allowance is sought can fairly be regarded as a service substituted for the terminal service which the defendant is obligated to perform. While the record is insufficient to warrant a finding exactly delimiting the defendant's legal obligation as to delivery at complainant's plant, it has not been demonstrated that this obligation is as extensive as the total service for which complainant seeks compensation.

Switching allowances to large industries have developed in certain parts of the country until in many instances they are little better than undue preferences, and represent service which we would, *ab initio*, long hesitate to direct a carrier to render in effecting delivery of carload freight. They are, without doubt, frequently compelled by the fear of loss of large tonnage; they deplete unnecessarily the revenues of the carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients, where it belongs, to the shoulders of other shippers who receive only average delivery service.

We are of opinion and find:

1. That the moving of cars between the interchange track, or the spur track just within the plant, and the places of unloading or loading within the plant is a spotting service.
2. That there is no evidence of record that the defendant has declined to render the spotting service or that the complainant is willing to have the spotting service rendered by means of defendant's engines.

3. That there are many industries in the same general territory and on the lines of defendant which do their own spotting without compensation from the trunk line.

4. That the allegations of unjust discrimination against, or undue prejudice to, complainant have not been sustained.

5. That where allowances are made the present allowances of the trunk lines to other industries are generally on the 1915-1916 basis of cost.

6. That the transportation cost to complainant of moving cars between the interchange track, or the spur track, just within the plant, and places of unloading or loading exceeds the allowance paid to it by defendant.

7. That, without passing upon our power to order a carrier to increase such allowance, complainant has not demonstrated on this record the propriety of an increased allowance from defendant for the spotting service in question.

The complaint will be dismissed.

57 I. C. C.

No. 10509.

WASTE MERCHANTS ASSOCIATION OF NEW YORK

v.

DIRECTOR GENERAL, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted February 26, 1920. Decided June 1, 1920.

On complaint that carriers serving tariff-named piers and stations in New York and Brooklyn, N. Y., failed to render the service of loading carload shipments of waste paper stock provided for under the rates in their tariffs, thereby compelling complainant's members to furnish such service by means of their own employees; and that in consequence rates were exacted which were in violation of sections 1, 2, and 3 of the act to regulate commerce, and of section 10 of the federal control act; *Held*, That the variance of the practice from the tariff undertaking was as much in the interest of complainant's members as of defendants; that the rates collected were not unreasonable, unjustly discriminatory, or unduly prejudicial for the transportation service rendered. Complaint dismissed.

Ernie Adamson for complainants.*R. W. Barrett* for respondents.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, Commissioner:

The complainant is an unincorporated association of individuals, partnerships, and corporations engaged in business in New York, N. Y., and the vicinity. Its members deal in waste material and ship paper and rags, known as paper stock, compressed into bales, in carloads, from New York City, N. Y., to points outside the state of New York. The complaint, filed March 11, 1919, alleges that defendants, in connection with the transportation of paper stock in bales, in carloads, from New York City to interstate points have refused to render the service of loading such shipments, to furnish agents to check and verify the shipments upon delivery at duly established stations, warehouses, sheds, piers, and platforms, and to furnish free lighterage service within the lighterage limits of New York harbor; that defendants in connection with the transportation of other kinds of freight furnish such service without charge to shippers; and that by reason of the facts alleged complainant's mem-

57 I. C. C.

bers have been subjected to the payment of rates and charges for transportation which were unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and of section 10 of the federal control act. We are asked to prescribe for the future rates, regulations, and practices and to require defendants to observe the provisions of the lawful tariffs.

Reparation is sought in an amount which shall represent "a reasonable allowance per ton or per car for lighterage services performed, and which are presumed to be performed by defendants," and "liquidated damages for violation of said act to regulate commerce and said federal control act." The allegation as to the disregard of the tariff provisions in respect to lighterage was abandoned.

To the general rule that shippers must load carload freight, the carriers serving New York harbor points publish exceptions which are substantially the same as the following:

Exceptions to Rule 8-B.

(Pennsylvania Railroad Company's exceptions to Official Classification No. 44, I. C. C. 7230.)

At New York, N. Y., and Brooklyn, N. Y., freight in carloads, other than bulky freight carried at carload rates, received or delivered at New York or Brooklyn stations, as shown in the list of stations and agencies (Note 9), and carrier's warehouses or sheds or over piers or platforms, will be loaded into and unloaded from cars by the carriers.

The exceptions at New York harbor have been brought to pass by conditioning circumstances at that port. Outbound freight is loaded from piers or pier stations into cars standing on floats alongside of piers instead of from trucks into cars on team tracks. Shippers at New York are required to bring their freight to carriers' pier stations and there to unload it to the bulkhead, or in instances to take their trucks on to the pier and unload the freight at some point opposite the location of the empty cars standing on floats to receive the freight.

The complainant contends that the defendants refused to perform the obligations assumed by the tariff exceptions cited above, in that they did not load paper stock of complainant's members into cars for the outbound movement during the period covered by the complaint. It is undisputed that the defendants did not load a large part of complainant's members' paper stock into cars during this period, contrary to their tariff undertaking and that the employees of these shippers actually performed the loading service. What were the circumstances which led the carriers to depart from their tariffs and former practice in this respect?

In April, 1917, the United States entered the world war, and one of the results was a congestion of traffic, accompanied by a labor shortage, particularly experienced by the carriers at their terminals in New York. The Central Railroad of New Jersey embargoed the shipment of paper stock. At the New York Central, pier 34, all westbound freight was embargoed, except in carload lots when loaded by the shippers. The Lehigh Valley Railroad and the Lackawanna Railroad embargoed paper stock. Shippers of paper stock along with nearly all other shippers in New York and Brooklyn carried their freight in trucks to railroad piers and pier stations. When these trucks of paper stock took their places in long lines of vehicles containing various commodities waiting for a chance to be unloaded at the piers, great delays ensued and the trucking became exceedingly expensive. These delays were largely due to labor shortage. Either the carriers or the shippers suggested that the movement of paper stock would be facilitated if the shippers were willing to load their paper stock into empty cars for outbound movement. The evidence is somewhat conflicting as to the origin of this suggestion. However, from the evidence as a whole, there is little doubt but that an agreement, tacit or expressed, was arrived at between the carriers and shippers of paper stock by which the latter undertook to do their own loading of the cars if they were permitted to drive their trucks on to the piers of the former with but short periods of waiting. The complainant's members thus were enabled to withdraw their trucks from the long lines of vehicles containing miscellaneous commodities and to form lines consisting exclusively of trucks of paper stock.

That such a mutual arrangement was for the benefit of both parties under the extraordinary conditions of war times can not be questioned. Paper stock is a low-grade commodity which ordinarily moves in large quantities and the record indicates that during the period of congestion these shippers were able to forward between 40,000 and 80,000 carloads of paper stock. This is persuasive that they fared much better than shippers of certain other commodities who were compelled to wait their turn in the slow process of loading by the carriers' reduced force of labor.

By no means all of the outbound pier stations in the vicinity of New York harbor were referred to in the testimony which is indefinite in character and in details conflicting.

Unjust discrimination against complainant's members or undue preference of other commodities has not been satisfactorily established. However, it appears that whereas these shippers were not provided with freight checkers or tallymen by the carriers and therefore were given bills of lading marked "shippers load and

count," shippers of hides and leather who also loaded cars on the floats at the piers were provided with freight checkers and given "clean" bills of lading. On the other hand the carriers would not allow shippers of spelter and other valuable metals even to load. Such shipments the carriers loaded and tallied for their own protection and for them issued "clean" bills of lading. This was discrimination, but it was not unjust; preference, but not undue; and no damage to complainant's members was shown to have arisen by reason of marking the bills of lading of paper stock, "shippers load and count," other than delays in the settlement of claims.

It is obvious, as pointed out above, that the carriers did not fulfill their complete obligation under the tariffs during the prevalence of war conditions, and as a consequence the shippers were compelled to incur the expense of loading by means of their own employees. For the most part, however, had the shippers insisted on their rights under the tariffs, their paper stock would have been received eventually after long delays along with other commodities and loaded by the carriers. Pursuing such a course, they would not have been able to ship nearly as much as they did, and the expense incident to the delays of trucks standing in long lines together with conveyances of other commodities for hours waiting to unload would have far outweighed the expense of loading the cars by their own employees. If deprived of some portion of this transportation service extended by tariff, due to war conditions, these shippers received a consideration for such deprivation. The very undertaking by the carriers in their tariffs to load carload shipments, as pointed out, is an exception to the general practice in favor of the shippers at New York. There is no evidence to indicate that the rates or the charges paid on complainant's shipments were excessive for the total transportation service actually rendered to them by the carriers, excluding loading.

For any failure to observe their published tariffs the carriers may be answerable in another process. There was no alternate clause in defendants' tariffs providing for the payment of an allowance if the shipper performed the loading service and hence since all allowances to a shipper must be published in the tariffs, even if defendants desired, they could not lawfully have compensated complainant's members for the loading service rendered by them. Nothing in the act requires that a shipper must be reimbursed for transportation service that he may elect to perform primarily for his own convenience. Section 15 says:

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than just and reasonable, and the Commission may, after hearing on a

complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished.

This provision is intended merely to provide against excessive allowances.

We are of opinion and find that the rates and transportation charges assessed on the shipments of paper stock of complainant's members during the period covered by the complaint were not unreasonable, unjustly discriminatory, or unduly prejudicial in violation of the act to regulate commerce, or unreasonable in violation of section 10 of the federal control act for the transportation service actually rendered by the carriers; that, under the circumstances, there was no obligation on the part of the carriers to make an allowance to complainant's members for the loading service. The complaint will be dismissed.

57 I. C. C.

No. 10808.

HOME PACKING & ICE COMPANY

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 2060.

Submitted March 17, 1920. Decided June 1, 1920.

1. Fourth-class and fifth-class rates, respectively, charged on carload shipments of salted meats, in bulk, and packing-house products from Terre Haute, Ind., to Chicago, Ill., found not unreasonable, but the adjustment of rates on those commodities from Terre Haute and St. Louis, Mo., to Chicago found unduly prejudicial to complainant and unduly preferential of its competitors at St. Louis in so far as the rates from Terre Haute have exceeded the contemporaneous rates from St. Louis. The undue prejudice having been removed, and there being no proof of damage, complaint dismissed.
2. Fourth section relief denied.

Samuel D. Royse and Clarence B. Cardy for complainant.
Homer T. Dick and K. L. Richmond for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by complainant.

Complainant is a corporation engaged in the meat-packing business at Terre Haute, Ind. By complaint filed August 4, 1919, as amended, it alleges that the carload rates applied on salted meats and packing-house products from Terre Haute to points within the Chicago, Ill., switching district, increased since August 1, 1917, without corresponding increases in the rates from specified competing packing-house points to the same destinations, notably from St. Louis, Mo., were and are unreasonable, and that the adjustment complained of was and is unjustly discriminatory and unduly prejudicial to complainant, in violation of sections 1, 2, 3, and 4 of the act to regulate commerce and of section 10 of the federal control act.

The prayer is for reparation on shipments made since August 1, 1917, based upon the difference between the contemporaneous rates from Terre Haute and St. Louis to points within the Chicago switching district. Rates are stated herein in cents per 100 pounds, and where referred to as present rates are those in effect at the time of the hearing.

The Chicago & Eastern Illinois Railroad is the short line between Terre Haute and Chicago, 178 miles, with a course almost due north and south. It also has a direct line between St. Louis and Chicago, 290 miles in length. Shipments from St. Louis to Chicago via the Pennsylvania system pass through Terre Haute, and may so move when handled via the Cleveland, Cincinnati, Chicago & St. Louis Railroad. There are, however, other and more direct lines between St. Louis and Chicago. Some of complainant's shipments from Terre Haute to Chicago moved over the Chicago & Eastern Illinois Railroad and others over the Pennsylvania system, the latter route being 233 miles in length.

About 90 per cent of complainant's output is produced from hogs and the remainder from cattle. Approximately 60 per cent of its hogs are purchased in the region about Terre Haute and the balance in live-stock markets, principally East St. Louis, Ill. Its products are marketed in competition with western packers for the most part, more particularly with packers located at Chicago, St. Louis, East Louis, and points in Iowa, Nebraska, Minnesota, Wisconsin, and Illinois. This competition usually is very keen, sales sometimes being made on a margin as narrow as an eighth of a cent a pound, and in ordinary times complainant's average profit is about 25 cents per 100 pounds. As above stated, however, the demand for reparation is based upon the spread between the respective rates from Terre Haute and St. Louis to Chicago.

The testimony of complainant's sole witness, its vice-president and general manager, is that about 90 per cent of the shipments involved were exported to Europe and that of the balance some were sent to Canada. As expressed on brief, practically all of the shipments embraced in the claim for reparation were first placed in Chicago storage and subsequently exported. These shipments were sold, under supervision of the United States Food Administration, to the British and other allied governments engaged in the world war. From time to time during the period from August, 1917, to about June, 1919, the various packers were called upon by the Food Administration for lists of commodities they could furnish within the ensuing 30 days, and allotments were made accordingly, at specified prices, free aboard ship, upon which bases contracts were made with the purchasing governments. Each packer was obliged to accept

its allotment, upon the terms prescribed, under pain of exclusion from further participation in the business; and the prices to all packers were uniform, thus eliminating the element of competition. One result was that the packer having the lowest freight rate enjoyed the largest profit, and in some instances the prices fixed were so low the complainant sustained a loss, whereas in others a good profit was received. These conditions did not obtain in connection with domestic business. Notwithstanding such rate disadvantages as it encountered, complainant's business has grown in volume from between \$3,000,000 and \$4,000,000 per annum immediately prior to the war, then including no exports, to about \$6,000,000 per annum at present, with a continuing and prospectively permanent export trade in competition with other packers.

From 85 to 90 per cent of the shipments on which reparation is asked consisted of fresh-salted meats, or what is termed of record "lightly salted meats," in bulk. The remaining shipments consisted of packing-house products, principally lard, in packages, and apparently some shipments of cured salted meats in bulk.

The process of curing fresh-salted meat requires that it be placed in refrigerated rooms and salted, and it is allowed so to remain for approximately 30 days. It is then packed with salt in 250 or 500 pound boxes and sent to the seaboard for export. Complainant's own storage facilities are limited and, during the annual period of heavy receipt of hogs, November 1 to March 1, are soon filled to capacity. Being seasonal, these requirements would not justify the cost of storage equipment sufficient to accommodate the full output. Recourse is had, therefore, to storage at Chicago, where large warehouses for the purpose are maintained and where brokerage, inspection, and banking facilities are available; also in order to concentrate shipments for export. Complainant's competitors similarly make use of the Chicago storage. The shipments here in question were so handled, and as there was no through rate from Terre Haute to seaboard with transit thereunder, complainant paid the applicable rates to and from Chicago. The attack is upon the inbound factors only.

The rates assailed are the class rates applied under the governing official classification and exceptions thereto, in which these commodities were and are rated as follows, minimum uniformly 30,000 pounds: Fresh-salted meats, i. e., lightly salted meats not cured, in bulk or in packages, fourth class; cured salted meats, in bulk, fourth class; cured salted meats and packing-house products, in packages, fifth class. Contemporaneously, commodity rates from St. Louis applied on fresh-salted meats, cured salted meats, and packing-house products, whether in bulk or in packages, minimum weight 26,000

pounds, except that on fresh-salted meats the minimum was 20,000 pounds, subsequently increased to 21,000 pounds, the commodity rate on fresh-salted meats being the same as on fresh meats. The respective rates and the changes therein since 1914, with the short-line distances, are shown in the following table:

To Chicago from—	Miles.	Oct. 25, 1914.		Oct. 26, 1914.		Sept. 20, 1917.		June 25, 1918.	
		Salted meats.	Packing-house products.	Salted meats.	Packing-house products.	Salted meats.	Packing-house products.	Salted meats.	Packing-house products.
Terre Haute.....	178	<i>Cents.</i> 14	<i>Cents.</i> 11.5	<i>Cents.</i> 14.7	<i>Cents.</i> 12.1	<i>Cents.</i> 22	<i>Cents.</i> 15	<i>Cents.</i> 27.5	<i>Cents.</i> 19
St. Louis.....	282	{ 10 13.5	{ 10	{ 10.5 14.2	{ 10.5	{ 10.5 14.2	{ 10.5	{ 13 18	{ 13

¹ Cured salted meats.

² Fresh-salted meats.

Using present salted-meat rates as illustrative, complainant compares the 27.5-cent rate from Terre Haute, yielding ton-mile and car-mile revenues of 30.9 mills and 46.35 cents, the latter based on the 30,000-pound minimum, with rates and corresponding revenues from various packing-house points in Illinois, Missouri, Nebraska, Iowa, and Minnesota to Chicago and Milwaukee, Wis. The contrasted rates themselves vary materially, including rates of 13 cents for distances of from 185 to 283 miles and of 16 cents for distances as low as 183 miles and as high as 367 miles. Excluding the St. Louis-Chicago rate, the contrasted ton-mile earnings range from 8.7 to 17.5 mills and the car-mile earnings from 11.33 to 22.73 cents, the two latter figures based upon a 26,000-pound minimum. The 13-cent rate from St. Louis to Chicago yields 9.2 mills per ton-mile and, at 26,000 pounds, 12 cents per car-mile; and it is pointed out that, whereas the distance from Terre Haute to Chicago is but 63 per cent of the distance from St. Louis to the same point, the rate from Terre Haute is more than 200 per cent of the St. Louis rate. It should be observed, however, that while the rates cited for comparison apply on cured salted meats and packing-house products they do not apply on fresh-salted meats, of which most, if not all, of the shipments in bulk consisted. See *Decker & Sons v. Director General*, 55 I. C. C., 433. As above shown, the rate on fresh-salted meats in bulk from St. Louis to Chicago is 18 cents, the same as the rate on fresh meats, and correspondingly higher rates on fresh-salted meats than on cured salted meats apply generally from and to the other points named. The rate on fresh meats from Terre Haute to Chicago is 36.5 cents, or 9 cents higher than on fresh-salted meats. Complainant also cites a rate of 15.5 cents on packing-house products from Indianapolis, Ind., through Terre Haute and Chicago, to

Aurora, Ill., 230 miles, in which the Chicago & Eastern Illinois and the Pennsylvania lines participate. Complainant's shipments exceeded the prescribed minimum, 235 carloads over the Chicago & Eastern Illinois in 1918 and 1919 having averaged 38,681 pounds.

Complainant distinguishes between the movement of its products from Terre Haute to Chicago for storage purposes and the normal movement of its products to consuming points in central freight association territory. With respect to the latter traffic complainant makes no objection to the payment of the full class rates as the same basis of rates is also paid by its competitors at St. Louis and other points west of Chicago. But it urges that with respect to its shipments to Chicago for storage purposes its rates should be measured by the lower commodity rates enjoyed by its competitors at St. Louis and other western points who also use the Chicago storage facilities. Complainant's claim for reparation is based primarily upon the relationship of rates between its plant and that of its St. Louis competitors to Chicago rather than upon the measure of the rates from Terre Haute to Chicago. While the measure of the rates from St. Louis must necessarily be taken into consideration in determining the issue of undue prejudice, it does not follow that the higher rates paid by complainant were intrinsically unreasonable.

Rates on these commodities in the territory to the west have been on a materially lower basis than in the territory lying east of the Indiana-Illinois line and applicable to traffic from points in Illinois to points east of that line; and while complainant contends that Terre Haute, only 6 miles from the dividing line, should take the western basis on the traffic to Chicago, defendants insist that it properly takes the basis applicable in the territory in which it is situate. The proceedings leading up to the approved application in that territory of fourth-class rates on packing-house products loose and fifth-class rates on those products packed are outlined in *Eastern Live Stock Case*, 36 I. C. C., 675, and *Fresh Meat and Packing-House Product Rates*, 38 I. C. C., 665. Following a proposed revision to meet the criticism in *The Five Per Cent Case*, 31 I. C. C., 351, 401, of the class-rate structure in central freight association territory, the modified class rates suggested in the *C. F. A. Class Scale Case*, 45 I. C. C., 254, as increased under authority of *The Fifteen Per Cent Case*, 45 I. C. C., 303, were duly established and subsequently increased 25 per cent pursuant to General Order No. 28 of the Director General of Railroads. Meanwhile, the Public Service Commission of Indiana authorized the application of the C. F. A. scale intrastate, but with a precautionary limitation of one year, its continuance to be subject to its establishment intrastate in Illinois. An application to that end was filed with the

Public Utilities Commission of Illinois, together with a fifteenth section application to this Commission, but both were withdrawn upon the advent of federal control. The C. F. A. scale while, therefore, applied from Terre Haute to Chicago, was not applied from St. Louis; and neither the rates in Illinois nor those from St. Louis received the 15 per cent increase in the period intervening between the 5 per cent increase and the increase under General Order No. 28. Shortly prior to the present complaint the Director General asked our advice concerning the appropriate classification and class and commodity rates to be applied in Illinois; and at the hearing in this case the defendants proposed, pending that investigation, temporarily to increase the St. Louis-Chicago rate on packing-house products, including cured salted meats, to 16.5 cents, to increase the 18-cent rate on fresh meats applicable also on fresh-salted meats, to 20.5 cents, and to establish the same rates from Terre Haute. This was satisfactory to complainant, and the prayer for future relief was withdrawn. After the hearing herein, following recommendations made by us to the Director General, we approved the application of the revised C. F. A. scale between points in that portion of Illinois on, south, and east of the line of the Atchison, Topeka & Santa Fe Railway from Chicago through Joliet and Streator to Pekin, the east bank of the Illinois River to its confluence with the Mississippi River, thence via the east bank of the Mississippi River to East St. Louis, including St. Louis. *Illinois Classification*, 55 I. C. C., 290; 56 I. C. C., 202. The adjustment proposed at the hearing has since been effectuated and the same rates now apply from Terre Haute to Chicago as from St. Louis to Chicago.

Insisting, notwithstanding the compromise adjustment, that the rates assailed have been reasonable throughout and that the western basis is unduly low, particularly under present conditions, defendants cite numerous existing rates on fresh-salted meats and on packing-house products from Chicago and from Indianapolis, Lafayette, and Evansville, Ind., Louisville, Ky., Cincinnati and Cleveland, Ohio, and St. Louis to various points in central freight association territory for distances ranging above and below the distance from Terre Haute to Chicago and with which the rates from Terre Haute seem to be properly aligned. It is explained that the Indianapolis-Aurora rate, cited by complainant, was overlooked in the general readjustment and continued inadvertently; and meanwhile shipments of fresh-salted meats and packing-house products from Indianapolis to Chicago have been on the full class basis. It appears that the value of the commodities shipped runs as high as \$12,000 per car.

Upon all the facts of record, we find that the rates assailed are not shown to have been or to be unreasonable, but that, to the extent that the rates from Terre Haute to Chicago have exceeded the contemporaneous rates from St. Louis to the same point, the adjustment has been unduly prejudicial to complainant and unduly preferential of competitors of complainant located at St. Louis.

The undue prejudice has been removed and there is no evidence of record that the lower rates in effect from St. Louis at the time the shipments moved were the proximate cause of any actual pecuniary loss to complainant. The fact that some competitors may have enjoyed larger profits does not establish damage to complainant as a consequence of the undue prejudice, and during the period hereinbefore mentioned the prices received by complainant were fixed, not by favored competitors, but by the Food Administration. Indeed, at no time and in no instance, as far as is shown, was the price made or controlled to complainant's detriment by any competitor by virtue of a preferential rate to Chicago. In short, the requisite proof of damage is wanting. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184; *Meeker & Co. v. L. V. R. R. Co.*, 236 U. S., 412; *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226; *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.*, 37 I. C. C., 350. Nor, in the absence of proof of damage, does the departure from the long-and-short-haul provision of the fourth section of the act entitle complainant to reparation. *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193.

Those portions of Fourth Section Application No. 2060 filed by J. F. Tucker, agent, in which the carriers named as parties thereto ask authority to continue to charge for the transportation of fresh meat, salted meat, and packing-house products from St. Louis and Indianapolis to Chicago, rates which are lower than the rates contemporaneously maintained on like traffic from Terre Haute and other intermediate points, were assigned for hearing with the complaint. Defendants submitted no evidence in justification of relief thereunder. To the extent that it is involved, the application will be denied.

Orders dismissing the complaint and denying fourth section relief will be entered.

57 I. C. C.

Nos. 698 and 707 (Sub-Nos. 215 and 541).

ODEN & ELLIOTT

v.

SEABOARD AIR LINE RAILWAY ET AL.

Submitted January 19, 1920. Decided June 4, 1920.

Findings in supplemental report in this case, 37 I. C. C., 345, denying reparation to Oden & Elliott on 84 shipments of lumber on which they failed to establish that they bore the transportation charges reaffirmed. New parties complainant barred by the statute of limitations. Amended complaint dismissed.

Vassar L. Allen and Brenton K. Fisk for complainants.

Claudian B. Northrop for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

No argument was had in this case, but the complainants filed exceptions to the proposed report issued by the examiner. The exceptions were of a general character, in which objections were taken to the entire proposed report. Certain modifications in that report are here made.

We held in our former supplemental report, 37 I. C. C., 345, decided December 20, 1915, following the principles announced in *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, that Oden & Elliott, the original complainants herein, were not entitled to reparation on certain interstate shipments of lumber, because it was not shown that they had borne the transportation charges. Included therein were claims for reparation in the amount of \$818.73 on 84 shipments which they had purchased f. o. b. destinations and on which they had charged the freight charges to their vendors, certain unnamed mill operators. On May 1, 1919, complainants petitioned us to reopen the proceedings for a reconsideration of our decision in respect to these claims and for permission to amend the complaint by joining the mill operators as additional parties complainant. This petition was granted by our order of May 27, 1919. At the subsequent hearing complainants endeavored to show by inference that Oden & Elliott finally bore part of the transportation charges in that there are still some small balances due them on the open accounts which they carried with the mill operators against

whom they had debited the freight charges. These open accounts, in certain instances extending over a period of many years, contained debits and credits respecting numerous other transactions, so that it was impossible to state what these final balances due represented.

It is well settled that a party claiming reparation is not entitled to recover unless, among other things, it is definitely shown that he finally bore the unlawful freight charges as such. The evidence just recited does not sustain complainants' contention that Oden & Elliott ultimately bore the freight charges and no additional evidence in support of the contention was offered.

The original complaint was brought by Oden & Elliott to recover reparation for their own account only, and not as agents for their vendors. The latter were not joined as parties complainant within the statutory period and, therefore, their claim for reparation is barred. In the supplemental report, *supra*, we stated:

The parties shown upon the record to have borne the freight charges are not before us, and are now barred by the statute of limitations.

The amending of the complaint in 1919 by permitting the intervention of the parties who paid and bore the freight charges as such can now have no effect as the statute has run.

However, the principal contention of complainants is that our former decision conflicts with that of the Supreme Court in *Southern Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S., 531, hereinafter referred to as the *Darnell-Taenzer Case*, from which they quote the following:

The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events, * * * The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum.

Since in most instances Oden & Elliott were named as consignors in the bills of lading and the names of their vendors were not mentioned in the transportation records, complainants contend that under the decision of the Supreme Court the Commission can not look beyond the transportation records to determine who actually bore the freight charges. But the statement quoted from that decision must be considered in connection with the facts appertaining to the case.

The history of the *Darnell-Taenzer Case*, *supra*, as fully reported in 190 Fed., 659, and 221 Fed., 890, shows that it arose out of and resulted in the affirmation by the Supreme Court of our decision in *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C., 668, wherein reparation was awarded to the Darnell-Taenzer Lumber Company and others for the exaction of unreasonable freight charges. In dis-

posing in that case of the defendants' contention that as the rate charged was added to the price paid by the consumer, the complainants, who paid the rate, were not actually damaged, we used language of similar import to that quoted from the decision of the Supreme Court in the *Darnell-Taenzer Case*, *supra*, saying at page 680:

If complainants were obliged to follow every transaction to its ultimate result and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify giving them. Certainly these defendants are not entitled to this money which they have taken from the complainants, and they ought not to be heard to say that they should not be required to refund this amount because the complainants themselves may have obtained some portion of this sum from the consumer of the commodity transported.

The *Burgess Case*, *supra*, and the *Nicola, Stone & Myers Case*, *supra*, were decided during the same month. In the latter case, at page 208, we said:

* * * the Commission is confined in the making of awards for reparation to the injury or damage sustained by those who are the real and substantial parties at interest in the transaction in which such transportation charges have been made. The reparation is due to the person who has been required to pay the excessive charge as the price of transportation. It follows that we must, in making orders of reparation in these cases, upon proper proof of the shipments, make such orders in favor of those who paid the charges as freight charges, or on whose account the same were paid, and who were the true owners of the property transported during the period of transportation.

This principle, modified only to the extent of eliminating proof of title to the property transported, has since governed us in awarding reparation for the collection of an unreasonable rate. Moreover, the *Nicola, Stone & Myers Case*, *supra*, upon which the former supplemental decision herein is based, was approved by the circuit court of appeals for the sixth circuit in the *Darnell-Taenzer Case*, 221 Fed., 890, and that decision in turn was affirmed by the Supreme Court in the very decision now relied upon by the complainants.

Upon the record as made, since no error of law or of fact has been shown, we reaffirm the former finding in our supplemental report in this case and deny reparation with respect to the 84 shipments here involved. An order of dismissal will be entered.

No. 10650.

EDWARD HINES LUMBER COMPANY

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON &
QUINCY RAILROAD COMPANY, ET AL.

Submitted February 11, 1920. Decided June 1, 1920.

Joint class rate charged on a carload shipment of oats from Chicago, Ill., to Picayune, Miss., in June, 1916, found to have been applicable, but unreasonable to the extent that it exceeded the aggregate of contemporaneous intermediate rates to and from East St. Louis, Ill. Reparation awarded.

John Andrew Ronan for complainant.

L. H. Lamb for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, Commissioner:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions were filed by the parties.

By complaint, filed May 16, 1919, complainant, a corporation, seeks reparation in the sum of \$36.19, on the ground that, in lieu of the joint rate of 36 cents per 100 pounds charged on a carload of oats shipped from Chicago, Ill., to Picayune, Miss., June 26, 1916, contemporaneous intermediate rates to and from East St. Louis, Ill., and aggregating 30 cents per 100 pounds were applicable, or that the rate so charged was unreasonable and otherwise unlawful in so far as it exceeded the aggregate of the intermediate rates. Informal claim was filed May 21, 1918.

The shipment weighed 60,300 pounds and moved from Chicago to Picayune over the defendant lines, consigned by complainant to its subsidiary, the Jordan River Lumber Company. Charges were collected in the sum of \$217.09, at the joint class D rate of 36 cents then in effect from and to those points, conformably to the rating of oats in the governing southern classification. The agency tariff which published that rate and to which the participating carriers were parties contained a "List of commodities on which rates are named

in other tariffs" and immediately beneath that caption appeared the following provision:

The Rates on Classes and Commodities as published in the Tariffs (supplements thereto or reissues thereof), referred to below, will govern in all cases, and the rates named in this Tariff, or as supplemented, will not apply on such Classes and Commodities from and to the points named.

One of the items carried thereunder made appropriate reference to another agency issue for rates on grain, grain products, and hay, carloads, from Chicago and certain other points to the Mississippi valley, but the tariff so referred to published no rates on grain from Chicago to Picayune. Contemporaneously, the defendant Chicago, Burlington & Quincy Railroad Company maintained a carload rate of 9 cents per 100 pounds on oats from Chicago to East St. Louis, applicable to interstate traffic; and at the same time a rate of 21 cents per 100 pounds on the same commodity applied beyond over the other lines in the route of movement.

Complainant's interpretation, in which the Chicago, Burlington & Quincy has concurred throughout, is that the above-quoted provision and the reference in the item thereunder to another tariff for rates on grain precluded the application of the rate assailed, carried in the tariff in which the provision appeared; and therefore that, no rate having been published in the tariff to which reference was so made, the intermediate rates above mentioned, carried in still other tariffs, were available and applicable.

This contention disregards the limited character of the quoted provision. The latter did not declare inapplicable all rates on classes and commodities carried in the same tariff merely by reason of reference in items thereunder to other tariffs for rates on specified classes and commodities. It provided that class and commodity rates "published" in tariffs so referred to would govern in all cases, in which event, and not otherwise, the rates carried in the tariff containing the provision would "not apply on *such* classes and commodities from and to the points named." In brief, the manifest purpose was to avoid a conflict of rates. No rate on grain from Chicago to Picayune having been "published" in any tariff referred to in the items listed under that provision, the joint class D rate of 36 cents was applicable.

On the other hand, a joint rate is *prima facie* unreasonable when and to the extent that it exceeds the aggregate of intermediate rates subject to the act; and not only is the presumption not rebutted in this instance, but it is strengthened by an admission of unreasonableness on behalf of the defendants. By recent tariff changes, the joint rate no longer exceeds the combination to and from East St. Louis.

We find that the rate assailed was applicable to the shipment, but that it was unreasonable to the extent that it exceeded 30 cents per 100 pounds, the sum of the contemporaneous intermediate rates to and from East St. Louis; that complainant made the shipment as described and bore the charges thereon; and that it was damaged thereby, and is entitled to reparation from the defendant carriers, in the sum of \$36.19, with interest. An order therefor will be entered, but no order for the future is necessary.

No. 10706.

FREDERICK CONLIN, P. LEROY HARWOOD, RECEIVERS
GROTON IRON WORKS,

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted February 26, 1920. Decided June 1, 1920.

Charges assessed on carload traffic originating beyond the lines of the New England railroads and delivered to the Groton Iron Works in Groton, Conn., over the New York, New Haven & Hartford Railroad Company's so-called ferry extension spur found unduly prejudicial to the extent that they exceed the charges assessed on like traffic delivered in Groton proper by more than \$3 per car.

C. L. Avery and Tracy Waller for complainants.

N. S. Buckingham for defendants.

REPORT OF THE COMMISSIONER

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

WOOLLEY, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions thereto were filed by the defendants.

The Groton Iron Works, hereinafter called complainant, is engaged in building ships for the Emergency Fleet Corporation United States Shipping Board. Its plant is located on the Thames River, opposite New London, Conn., within the corporate limits of the borough of Groton, Conn., and is about 1.5 miles south of Groton station on the New York, New Haven & Hartford Railroad, hereinafter called the New Haven. It is probably the largest single industry on New London harbor, employing between 3,300 and 4,000 men and in addition to facilities for the receipt and delivery of freight by water has direct connection with the New Haven's so-called ferry extension spur. This spur extends from a point 0.8 of a mile north of the plant, the location of the New London Ship & Engine Company, to Midway, Conn., a distance of 3.32 miles, where it joins the main line from New York to Boston. It was formerly a part of the New York, Providence & Boston Railroad, but was discontinued as a main line about 30 years ago when the bridge over the

Thames River was completed. Groton station is on the New Haven's main line approximately 1 mile east of New London. Owing to the layout of the New Haven's tracks carload traffic from the west intended for delivery at complainant's plant necessarily moves through Groton to Midway and thence back over the ferry extension. Under a regulation of the New Haven this traffic must be billed to Midway and the charges thereon are computed at the rates to Midway plus \$3 per car for switching.

The complaint, filed June 14, 1919, by the receivers of the Groton Iron Works, attacks the propriety of this regulation on the ground that it deprives complainant of the benefit of the rates to Groton and subjects it to the payment of rates and charges that are unreasonable, unjustly discriminatory, and unduly prejudicial. The complaint also attacks the charges for switching. Reparation is asked on all carload shipments received since August 1, 1917, on which the charges exceeded those that would have accrued under the Groton rates.

Complainant cited four specific shipments as illustrative of the disadvantage to which it is alleged to be subjected by reason of the requirement that to obtain delivery on its tracks the traffic must be billed to Midway. Two of these shipments consisted of lumber from Savannah, Ga., moving all rail via New York and the New Haven. The rate on lumber from Savannah to New London and Groton when these shipments moved was 28 cents per 100 pounds, and to Midway 31 cents. The present rates are 34 cents and 37 cents, respectively. The charges on the two shipments amounted to \$316.62, including the switching charge of \$3 per car, or \$36.06 more than would have accrued under the rate to Groton. The third shipment consisted of a carload of cement from Glens Falls, N. Y., moving in June, 1918. The tariff then in effect carried a rate of \$2.36 per net ton to New London and Groton and \$2.82 to Midway. This shipment was billed to Groton and in addition to the charge of \$159.45 for transportation and switching, which was \$28.52 more than would have been paid at Groton, a diversion charge of \$2 was assessed, the destination having been changed while the car was in transit. On October 15, 1918, the so-called water-competitive rate to New London and Groton was eliminated and thereafter a rate of \$3.20 per ton was in effect to the three points. The fourth shipment consisted of steel bars from Youngstown, Ohio. This car was also billed to Groton and arrived at that point before complainant was advised that it had left Youngstown. In this instance the rates to New London, Groton, and Midway were the same, 23.5 cents per 100 pounds. After the arrival of the car complainant gave instructions to forward it over the ferry extension and for this service

the New Haven assessed a rate of 9 cents for the movement from Groton to Midway, amounting to \$106.34, a switching charge of \$3, and a reconsigning charge of \$5. The total charges were \$378.95. The charge for delivery at Groton would have been \$264.61.

Bituminous coal is another commodity in which complainant is interested. The rate on that commodity from group 1 mines on the Pennsylvania Railroad in Pennsylvania to New London is \$2.90 per gross ton, to Groton \$3.30, and to Midway \$3.40. The rates to New London and Groton were originally predicated on the charge from the mines to South Amboy, N. J., and thence by water, and because the water rate was higher to Groton than to New London the rail rate was also made higher. Midway is not on the water and takes a higher basis of rates. Apparently there is little or no movement of coal by water to either New London or Groton.

Midway, although named in the tariffs, is not, properly speaking, a station. There are no industries there and no local traffic moves in or out. It is the main intermediate yard of the New Haven between New York and Boston. All traffic originating in New York or received from the New Haven's western connections moves in through trains to this yard, where the cars are reclassified and dispatched north or east. For operating reasons carload traffic intended for delivery in New London or Groton moves through those points to the yard and is then switched back. There is, therefore, no substantial difference in the actual handling of cars for delivery in New London, Groton, or to complainant's plant. The only difference is that traffic for New London and Groton moves to Midway and then back from 3 to 4 miles over the New Haven's main line, while traffic to the Groton Iron Works moves to Midway and back, 2.5 miles, over the ferry extension. The switching charge has been assessed for some years on traffic moving between Midway and industries on the east side of the harbor served by the ferry extension and was in effect when complainant's plant was built.

Complainant is principally interested in the rates on lumber, coal, and steel. For many years rates on lumber from the south to points on the New Haven reached also by water have been lower than the rates to interior points. Groton is on tidewater, as is also Noank, Conn., the first station east of Midway, but Midway is 3 miles from the water and consequently takes the higher basis. The coal rates are adjusted in a similar manner, lower rates applying to water-competitive points. The departures from the fourth section resulting from the maintenance of lower rates to points immediately west and east of Midway are protected by a fourth section application which has not been heard. Apparently the fourth section is observed in the adjustment of rates on iron and steel. Applications for

authority to continue lower rates on cement from the Hudson and Lehigh districts to coast cities in New England than the rates contemporaneously in effect to intermediate points were denied in *Allentown Portland Cement Co. v. B. & O. R. R. Co.*, 49 I. C. C., 502.

This complaint has been occasioned principally by reason of the maintenance of higher rates at Midway than at Groton or New London, the inconvenience resulting from the rule requiring Midway to be indicated on the billing being of secondary importance. As stated, Midway is a yard; the rates are in fact paper rates, and the only traffic to which they apply is that destined to or originating at industries in Groton on the ferry extension. The only other industry on the spur is the New London Ship & Engine Company, a concern employing between 1,500 and 2,000 men in the manufacture of marine engines. It appears that the carload traffic received by the two companies on the ferry extension during the two years ended August 31, 1919, was five times as much as that delivered in Groton proper, and about 70 per cent of the total delivered in New London. In 1918 the New Haven had under consideration the establishment of an agency station on the ferry extension to be known as Eastern Point, and the general freight agent of that line stated that if such a station had been established no objection would have been interposed to the maintenance of rates on lumber on the Groton basis, which would have been effected by a reduction in the rates to Midway.

It is clear that there is nothing unlawful in the requirement of the New Haven that carload traffic intended for delivery to complainant over the ferry extension shall be billed to Midway. If billed to Groton it is short of destination, and except for the circumstances that the break-up yard is east of Groton, would be set out at that point. In compliance with this requirement complainant stamps on its shipping orders "ship all orders to Midway"; nevertheless, because of its location, shippers frequently overlook this notation and forward cars to Groton. To guard against such errors and to avoid unnecessary expense and delay complainant instructed the New Haven in 1917, at the beginning of its operations, to handle all carload traffic consigned to it over the ferry extension, but notwithstanding such instructions the carrier has placed cars at Groton, resulting in charges that would not have accrued if the instructions had been followed.

No evidence was offered by either of the parties respecting the reasonableness of the rates to New London, Groton, or Midway. The issue is mainly whether the defendants are justified in charging more on traffic delivered over the ferry extension than they contemporaneously charge on like traffic delivered in Groton. The location of complainant's plant does not differ materially from the location of

other industries in and around New London harbor, the effect of water competition is no greater at Groton, and the circumstances of transportation are substantially the same. The New Haven is entitled to some compensation for the service performed in switching over this spur and \$3 per car does not appear to be an unreasonable amount to charge. There is no showing that complainant has been damaged by reason of the lower rates maintained on traffic to Groton.

We find that the charges assailed on carload traffic originating at points west of Groton and delivered over the ferry extension, are, and for the future will be, unjust and unduly prejudicial to complainant and complainant's traffic to the extent that they exceed or may exceed by more than \$3 per car the charges contemporaneously maintained by the defendants on like traffic delivered in Groton proper. We also find that the failure of the New Haven to comply with complainant's delivery instructions has resulted in additional charges that, under the circumstances here shown, should not have been assessed, but as it does not appear that complainant has paid these charges no order for reparation can be entered on this record.

57 I. C. C.

No. 10570.¹

WILLIAM SCHUETTE & COMPANY

v.

DIRECTOR GENERAL, NORTHERN PACIFIC RAILWAY
COMPANY, ET AL.

Submitted May 12, 1920. Decided June 1, 1920.

1. Shipments of lumber in carloads from points in Oregon, Washington, Idaho, and Minnesota to Minneapolis or Minnesota Transfer intended for destinations east of Chicago, Ill., were transferred into other cars at Minnesota Transfer and reshipped to ultimate destinations on account of operating rules of the Great Northern and Northern Pacific railways which prohibited their cars from moving off of their lines.
2. Charges in excess of those which would have accrued at the through rates plus legally applicable reconsigning charges found to have resulted from the unlawful refusal of the Northern Pacific and the Great Northern to permit reconsignment in accordance with their tariffs. Reparation awarded.

W. J. Herman for complainant.*John F. Finerty* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, *Chairman*:

A report proposed by the examiner was served upon the parties to which exceptions were filed by defendants.

The complaint, which was seasonably filed, concerns 47 shipments of lumber forwarded between November 20, 1916, and May 14, 1917, from points in Oregon, Washington, Idaho, and Minnesota, originally consigned to Minneapolis or Minnesota Transfer, but intended for and reconsigned to destinations east of Chicago, Ill. It is alleged that complainant was compelled to have the shipments transferred to other cars at Minnesota Transfer by reason of the fact that the Great Northern Railway Company and the Northern Pacific Railway Company, herein after called defendants, refused to permit their own cars to move beyond their respective lines. Complainant incurred additional expenses for transferring the shipments and for switching and demurrage.

¹ This report embraces Docket No. 10570 (Sub-No. 1), Same v. Director General, Great Northern Railway Company, et al.

Freight charges were collected at the combinations of rates based on Minnesota Transfer. It is alleged that the charges collected by the carriers were unreasonable, unduly prejudicial, and illegal; and that the additional expenses incurred in transferring the shipments resulted from the unlawful action of defendants. Reparation is asked.

It was complainant's intention to reconsign the shipments to destinations east of Chicago, but beginning in December, 1916, due to car shortage, defendants refused to permit their own cars, into which the shipments were loaded, to leave their rails. As complainant had no facilities for transferring the shipments it ordered them switched to certain warehouses at Minnesota Transfer where they were loaded into other cars and then forwarded east on new billing. Complainant bore the additional expense for transfer, switching, and demurrage, as well as the freight charges at the local rates to and beyond Minnesota Transfer. At the time of movement there were joint rates to the ultimate destinations of 26 of the shipments; and through rates, composed of rates to Chicago, Minneapolis, or Minnesota Transfer, and proportionals beyond, to the ultimate destinations of the remaining shipments. Complainant asks reparation in the amount of the difference between the total charges paid, including the transfer charges, and those which would have accrued at the joint or through rates.

The practice of reconsigning shipments of lumber is very general. Defendants' tariffs permitted reconsignment at Minneapolis and Minnesota Transfer at the through rates from these points of origin to ultimate destination, and did not prohibit the movement of their own cars beyond their rails. The tariffs provided, however, that reconsignment would not be permitted if the lading of the car was added to or partially removed.

The record is incomplete with respect to the action taken by complainant in each particular instance before having the lading transferred. Generally negotiations were conducted by telephone and the details of the transactions were not preserved. The following letter relating to reconsignment, addressed by complainant to the agent of the Northern Pacific at Minneapolis, is typical:

Confirming our telephone conversation this date, kindly have N. P. car 48082 set to North American Lumber Company's yard at Minnesota Transfer to be transferred into a car that can travel east.

Orders were placed with the carriers promptly and the additional charges assailed were due solely to defendants' refusal to permit their cars to move east.

Complainant does not attack the propriety of defendants' action in restricting the movement of cars to their own rails, but con-

tends that this should have been accomplished without imposing additional expense upon the shipper.

In *Schwager & Nettleton v. G. N. Ry. Co.*, 12 I. C. C., 521, in which case transfer was accomplished by defendant, we said:

The shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obliged to follow his shipment and make the transfer himself he is entitled to the protection afforded by a published definite rate.

The defendant can not excuse the collection of this unpublished and unknown drayage and transfer charge by proof that it had a rule which forbade the sending of its own cars beyond its own line during a period of car shortage and congestion of business.

On April 7, 1908, we announced the view that:

Where connecting lines have united in publishing a joint through rate between two points it is the sense of the Commission that it is the duty of the carriers in the route to provide the car and permit it to go through to destination or to transfer the property en route to another car at their own expense. *Conference Ruling No. 59.*

In *Omaha Grain Exchange v. G. N. Ry. Co.*, 47 I. C. C., 532, we held that under joint rates carriers must send shipments through promptly and that an operating rule was unreasonable and unlawful which required holding grain in cars at junction points for indefinite periods. There, however, the principal issue was with respect to the delay incident to the transfer of the shipments by the carriers.

Defendants concede that where joint rates were established they were obliged to permit shipments to move through in the original cars or to transfer them at their own expense. They contend, however, that complainant, when it learned that defendants' cars would not be permitted to move through, should have billed its shipments direct to ultimate destination thus affording defendants an opportunity to send foreign equipment to such points; that complainant, before transferring each particular shipment, should have insisted that defendants reconsign it at the joint through rates; and that complainant by having the shipments transferred violated the reconsignment rules and prevented the application of the through rates.

It is contended for defendants, who were not parties to the proportional rates east of Minneapolis, that in the absence of joint rates the principle of Conference Ruling No. 59 is inapplicable. Subsequent to the movement the tariffs were amended to specifically provide that reconsignment rules would apply "where shipments are handled on local rates, joint rates or combination of intermediate rates." Defendants refer to this fact as an indication that the previous rule, which provided for the application of through rates, had reference only to joint rates. This position is not well taken. The previous
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rules authorized reconsignment and provided: "Rate in effect at the time of shipment from originating point to final destination will govern." Shipments are frequently reconsigned on basis of the sum of the local rates under tariffs which provide for reconsignment at the through rate, which, in such instances, is made by combining two or more rates instead of by the use of a single factor. *Doran & Co. v. N. C. & St. L. Ry.*, 33 I. C. C., 523, 527. In *Chicago & North Western Railway Reconsignment Rules*, 29 I. C. C., 620, we said:

There is no right inherent with the shipper to demand that any transfer resulting from the reconsignment at his request of freight originally consigned and billed to a given destination, shall be performed by the carrier, either at its own expense or otherwise. * * *

But in that case the tariffs specifically prohibited reconsignment which would require the movement of cars to points on connecting lines to which joint rates were not established. Here the tariffs authorized reconsignment without a similar restriction.

It is shown that one consignment weighed 37,080 pounds inbound and 52,100 pounds outbound. Complainant was unable to explain this alleged discrepancy, but it introduced in evidence copies of invoices upon which it bought the lumber at point of origin and sold it at destination, which were substantially identical so far as quantity and dimensions were concerned. All the shipments were sold before leaving points of origin and if the carriers had so permitted would have moved through without transfer of lading. It is asserted for complainant that in transferring the shipments no lumber was added or taken away.

In *Brabston v. C. of G. Ry. Co.*, 51 I. C. C., 459, a carload of lumber, which the carriers refused to re consign because of an embargo, was unloaded and stored by an independent storage company, and was subsequently forwarded to the ultimate destination on new billing at the rates to and beyond the storage point. The tariffs authorized reconsignment without restriction as to embargoes. We held that the shipment was essentially a through shipment; that the joint rate to ultimate destination was applicable; and reparation, including the additional charges incurred in connection with the storage of the shipment, was awarded.

It is unquestionably established that defendants at all times denied their obligation to permit shipments to move through under reconsignment where the rates were based on Minneapolis, Minnesota Transfer, or Chicago, and, therefore, that specific demands by complainant for such reconsignment would have been refused. In these circumstances the showing of a specific demand with respect to each of the 21 shipments moving to destinations taking rates based on these points was unnecessary, for the law does not require the

performance of a vain act. *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512. With respect to shipments destined to points to which joint rates were established defendants admit on brief that "it is abundantly clear that the complainant must have known that cars subsequently shipped would not be allowed to move to eastern destinations." Defendants apparently contend that complainant did not give them an opportunity to comply with their reconsigning rules before transferring the shipments. Beginning in December, 1916, defendants refused to permit their equipment to move east, and so notified complainant. Complainant was informed that the Great Northern did not have men available to transfer the loads. Complainant was forced by defendants to transfer all the shipments. In these circumstances, also, complainant need not prove a specific demand for the reconsignment of each of the 26 shipments which moved to destinations to which joint rates were in force.

We find that defendants should have permitted all the shipments to be reconsigned on basis of the joint or through rates, plus the applicable reconsignment charge, if any; that the charges complained of, including those for transferring the shipments, were the direct result of defendants' unlawful refusal to permit reconsignment as provided by their tariffs; and that complainant is entitled to reparation in the sum of the difference between the charges assailed and those that would have accrued at the through rates plus applicable reconsignment charges, if any, with interest. The exact amount of reparation due can not be determined on this record. Complainant should comply with the provisions of rule V of the Rules of Practice.

No order for the future is necessary.

57 I. C. C.

No. 10492.

PHELPS DODGE CORPORATION ET AL.

v.

DIRECTOR GENERAL, ARIZONA & NEW MEXICO
RAILWAY COMPANY, ET AL.

Submitted February 6, 1920. Decided June 2, 1920.

1. Rates on copper bullion, in carloads, from points in Arizona to New York, N. Y., not found to be unreasonable or otherwise unlawful.
2. Rates on copper bullion, in carloads, from points in Arizona to Galveston, Tex., found unreasonable and reasonable maximum rates prescribed for the future.

John S. Burchmore and Luther M. Walter for complainants.

G. W. Feakins for complainants and Arizona Copper Company, intervener.

F. A. Jones for Arizona Corporation Commission and United Verde Copper Company, interveners.

T. J. Norton and James L. Coleman for defendants.

REPORT OF THE COMMISSION.

CLARK, *Chairman*:

Complainants herein are corporations engaged in smelting copper ore at Douglas, Morenci, Globe, and Clarkdale, Ariz. They allege that the rates on copper bullion, in carloads, from the points named to New York, N. Y., all rail and rail and water, are, and since June 25, 1918, have been, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act to the extent that they exceeded and exceed by more than 25 per cent the rates in effect prior to June 25, 1918, and that rates from the same points of origin to Galveston, Tex., and New Orleans, La., are unreasonable, unduly prejudicial, and in violation of the long-and-short-haul provision of section 4 of the act to regulate commerce. The establishment of reasonable and nonprejudicial rates and reparation on shipments made on and after January 1, 1919, are asked. The claim for reparation is thus limited by reason of complainants' understanding that the increased cost of transportation was provided for in the increased price for copper fixed by the government when the rates here attacked became effective. That price expired

December 31, 1918, and a lower price immediately prevailed. The Arizona Corporation Commission, the United Verde Copper Company, and the Arizona Copper Company intervened in support of the complaint. Except where otherwise specified, rates are stated throughout this report in amounts per ton of 2,000 pounds.

Copper bullion is produced by smelting copper ore. It leaves the smelters in large cakes or slabs weighing about 300 pounds each, and from those cakes refined copper is produced. In the refining process impurities are removed and gold and silver in varying percentages are frequently extracted.

RATES TO NEW YORK, N. Y.

The principal movement of copper bullion from these points of origin is to a refinery at Laurel Hill, Long Island, N. Y., where both rail and water facilities are available. The principal rail-and-water route to New York from Douglas, which was selected by the parties as being fairly representative of the points of origin, is via the lines of the El Paso & Southwestern Railroad and the Galveston, Harrisburg & San Antonio Railway to Galveston, a distance of 1,103 miles, thence via the Morgan line or the Mallory Steamship line, a distance of approximately 2,200 miles. While the traffic may move by rail and water through New Orleans, it is testified that the tonnage moving via that route is negligible. The all-rail routes are through Kansas City or St. Louis, Mo., or Chicago, Ill. The Atchison, Topeka & Santa Fe Railway Company has a direct line from Clarkdale to Chicago.

It is testified for defendants that in 1901 the rail-and-water rate from Douglas to New York via Galveston was \$20; that the rate was reduced early in 1902 to \$15.95, and that it was further decreased a few months later to \$9.95. Complainants assert, however, that those rates were applicable from points other than Douglas and via routes longer than those now used. It appears that no smelters were in operation at Douglas prior to 1904. From 1904 to June 24, 1918, the rates applicable from Douglas via the routes now used were subject to minor fluctuations. The rate applicable for approximately three years prior to June 25, 1918, was \$8.55 via the rail-and-water route from Douglas, and was increased to \$16.50 on that date pursuant to the requirements of General Order No. 28 of the Director General of Railroads. The all-rail rate from Douglas to New York prior to January 15, 1915, was \$9.05. It was increased on that date to \$10.05, and on June 25, 1918, a blanket rate of \$16.50 was established under the general order referred to from points in Arizona and other western states to eastern points via all-rail routes as

well as via rail-and-water routes. The distances from the points of origin to New York range from 3,303 to 3,636 miles via the rail-and-water route through Galveston and from 2,512 to 2,620 miles via the all-rail routes.

Complainants compare the increase of approximately 60 per cent on copper bullion from the Arizona points to New York with an increase of 25 per cent or less on various commodities, including copper bullion from Kennett, Calif., to New York, and iron and steel articles moving for comparable distances in transcontinental traffic. These comparisons are unaccompanied by evidence of the circumstances surrounding the establishment of the rates referred to, the volumes of traffic moving thereunder or other governing factors. While the rate from Kennett to New York was increased less than 25 per cent, it is the same as that from the Arizona points, and in any blanket adjustment of rates, embracing points widely separated and from and to which varying rates have theretofore applied, it is obviously impossible to observe a uniform percentage increase.

Defendants contend that the rates on copper bullion effective prior to June 25, 1918, were unduly low and that it was necessary to impose upon the bullion traffic increases greater than those imposed upon other commodities in order that the bullion rates might be brought up to their proper level. It appears that for a considerable period of time prior to federal control the carriers participating in the transportation of bullion had endeavored to increase the rates from Arizona, as well as from points in other states, but owing to disagreements among themselves, and to competition of producers in various parts of the country, the rates were not increased until June 25, 1918.

It is asserted for complainants that copper bullion is very desirable traffic, loads to considerably more than the marked capacity of the car, and that by reason of the weight of the units in which it is handled it is not readily pilfered. It is also shown that the water lines have eagerly sought the bullion traffic by reason of its value as ballast. These assertions are not refuted by defendants, but it is shown in their behalf that copper bullion is a commodity of high value, approximately \$500 a ton, and yields comparatively low ton-mile earnings under the rates attacked. For example, the rate of \$16.50 from Clarkdale to New York, all rail, yields ton-mile earnings of 6.2 mills and car-mile earnings of 24.8 cents, while the earnings on other commodities, including infusorial earth, cotton, canned goods, wrought-iron pipe, soda ash, and fire brick, range from 6.4 to 19.8 mills per ton-mile and from 14 to 51.8 cents per car-mile over the all-rail routes from points in Arizona and from points in other states for comparable distances. There is substantially no showing,

however, as to the volume of movement or other relative transportation characteristics.

It is shown for defendants that for a distance of 2,512 miles from Douglas to New York the former all-rail rate of \$10.05 yielded 4 mills per ton-mile, and that the present rate of \$16.50 yields only 6.5 mills. The corresponding car-mile earnings, using the average loading of approximately 44 tons, are 17.6 and 28.6 cents, respectively. Comparisons introduced by defendants show that ton-mile earnings on various other commodities moving for similar distances from western points to the east range from 9.3 mills to 2.18 cents, the corresponding car-mile earnings ranging from 19 to 71 cents. Car-mile comparisons offered by complainants show earnings lower than those accruing on copper bullion on various commodities moving from Pacific coast points to New York City, as well as to other points, under the rates established pursuant to the requirements of General Order No. 28. It is contended for defendants, however, that the car-mile comparisons so offered are necessarily more favorable to complainants' contentions than would be ton-mile comparisons by reason of the fact that the average carload weight of bullion is used, while on other commodities the earnings are computed on basis of the minimum weights. We have frequently commented upon the value of the car-mile and ton-mile tests, and such comparisons have been found of much value in many cases, but they must be considered in the light of all the circumstances and conditions and are of controlling force only when those circumstances and conditions are substantially similar.

Defendants compare the rate of \$16.50 on bullion from Douglas to New York with rates ranging from \$16 per ton on fire brick to \$35.50 per ton on canned goods from points in Pennsylvania to points in Arizona. It is shown that the rate on wool in grease from Jerome Junction, Ariz., to New York is \$40 per ton and the rates on brass and copper scrap and on zinc scrap from California points to New York are \$27.80 and \$30 per ton, respectively.

Complainants contend that the rail-and-water rates should be lower than the all-rail rates. They observe that at the time of the hearing defendant Mallory Steamship Company was not under federal control and was being operated in competition with rail lines; that they consider the service by water less valuable to shippers than the all-rail service and generally use it only when there is an advantage in rates; and that the cost of service to the carriers should be less via water, as a boat will carry as much freight as an entire train without the expense incident to the construction and maintenance of a roadway and without the delay and expense occasioned by shipments passing through numerous terminal and junction points. While there are

certain expressions of opinion as to the cost of transportation by water as compared with the cost of transportation for similar distances by rail, there is no evidence as to the relative costs of such services nor is there any evidence as to the approximate cost of service via the rail-and-water routes through Galveston and New Orleans. Counsel for complainants point out that in *Southwestern Shippers Traffic Assn. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 570, 583, we found that the movement of traffic by water between Galveston and New York, a distance of 2,200 miles, was fairly equivalent to rail transportation for 350 miles between certain points in southwestern territory. It appeared from the record in that case that the expense of operating a ship upon the ocean was not great and that the terminal or dockage expenses were the more serious item. It was said that of the total expenses 60 per cent were at the dock and 40 per cent upon the ocean. That case, however, was decided in 1912, and it can not be seriously contended that transportation conditions during the period of federal control and at the present time may be fairly compared with those existing more than seven years ago.

Defendants introduced exhibits showing that the cost of labor and materials has increased greatly in recent years, that the total compensation paid labor by one of the principal defendants for the year ended December 31, 1918, was nearly 100 per cent greater than that paid for the year ended June 30, 1915, that the cost of materials used by defendants has increased more than 100 per cent within the past four years, and that the deficit of the federal transportation system for the first four months of 1919 was greater than for the entire year of 1918. Complainants point out that while operation of the railroads under federal control earned less than the aggregate standard return, federal operation of defendants El Paso & Southwestern Railroad and Atchison, Topeka & Santa Fe Railway earned 119.3 and 110.8 per cent, respectively, of the standard return during the year 1918, and such operation of the railroad of defendant Southern Pacific Company earned 89.5 per cent of its standard return. It appears that these earnings were enhanced by substantially increased volumes of traffic, and more especially of copper bullion, moving during the period referred to, and counsel for complainants concedes that the bullion traffic was stimulated by war-time necessities and the demands of the government. While rates ought not to be established upon the basis of a period of adverse conditions, so neither should they be fixed altogether with respect to recent years of comparative prosperity. *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C., 376. It is well established that the unfavorable financial condition of a defendant can not lawfully be remedied by the imposition of unreasonable rates, and it is equally well settled

that a favorable financial condition can not lawfully be made the basis for rates that are noncompensatory. *Railroad Commissioners of Florida v. S. A. L. Ry.*, 16 I. C. C., 1, 5.

With respect to the rail-and-ocean rates defendants point out that the rate from Douglas to New York in force prior to June 25, 1918, yielded 2.86 mills per ton-mile, while the present rate yields only 5.51 mills, based on the actual distance by rail and water. It is asserted for defendants that the rail-and-ocean rate should not be lower than the all-rail rate as the service by water is valuable to the shipper and the railroad and steamship lines generally are not operated in competition but under a unified control. It is asserted that the rail-and-ocean rate is the key to the all-rail situation, as a lower rate by water would divert traffic from the all-rail routes to the Gulf lines. Since the rail-and-ocean rate of \$16.50 was established the steamer lines operating from Galveston to New York have been relinquished from federal control.

In *The Fifteen Per Cent Case*, 45 I. C. C., 303, 324, decided in June, 1917, we said:

Special emphasis has been laid upon the unusually heavy increased expenses that have been laid upon the carriers by water, which, because of arrangements for through carriage with rail carriers, are subject, as to part or all of their rates, to our jurisdiction. Ordinarily rates via rail-and-water routes are maintained at a lower level than via all-rail routes. Largely increased costs of operation, the diversion of traffic to other channels because of war conditions, and the attendant increased marine insurance have laid upon such rail-and-water routes unusual burdens. We think that existing conditions justify the maintenance of rates via such routes on a level not higher than the all-rail rates between the same points.

In *Public Utilities Commission of Colorado v. Ry Co.*, 52 I. C. C., 439, 462, decided March 31, 1919, we reiterated the facts noted in the above quotation. It is not shown that the conditions mentioned no longer obtain; there is no evidence to sustain complainants' contention that the cost of transportation via the rail-and-water routes under present conditions or under conditions obtaining during the period of federal control is or was less than that via the all-rail routes. We can not find on the evidence here presented that rates on copper bullion from the Arizona points named to New York via rail and water are unreasonable or that they should be lower than the rates applied from the same Arizona points to New York via all-rail routes.

Complainants show that points of origin in Arizona, Montana, Utah, and other states were not grouped under a blanket rate prior to the effective date of General Order No. 28; that Douglas, Globe, Clarkdale, and Morenci did not take one and the same rate, nor did they take the rate applied from points in other states. Witness for

complainants testified that there should be some spread between the rates from the Arizona points named, but that there should not be any material difference. Witness for intervener Arizona Corporation Commission was of opinion that the rate from Douglas should be less than the rate from Clarkdale. We think those views are entitled to consideration in connection with rates to Galveston, hereinafter discussed. Defendants argue that there is no discrimination now, as all points of origin in the west have the same rate. It is apparent that the various points of origin in Arizona could not be given different rates on smelter products moving to eastern points without disturbing the blanket-rate adjustment applicable throughout most of the western states. In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. In the absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial a group adjustment should not be disturbed. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 56; *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323.

We are of opinion in the light of the evidence adduced that the rates complained of from Douglas, Morenci, Globe, and Clarkdale to New York, via all-rail and via rail-and-water routes, are not unreasonable, unjustly discriminatory, or unduly prejudicial.

RATES TO GALVESTON AND NEW ORLEANS.

While complainants allege that the rates from Arizona points above named to New Orleans are unreasonable, substantially no evidence with respect thereto was adduced, although it is testified that the New Orleans route is a very unusual one for bullion moving via rail and water to New York. No commodity rates are published on copper bullion, in carloads, from the points of origin to Galveston and it is asserted that the traffic can not move on basis of the fourth-class rates that would apply. The fourth-class rate from Douglas to Galveston is \$1.975 per 100 pounds, or \$39.50 per ton of 2,000 pounds, and the fourth-class rates from Morenci, Globe, and Clarkdale are considerably higher.

Complainants desire reasonable rates to Galveston in order that they may ship to that point with a view to the utilization of private steamers or chartered bottoms when defendants' water lines can not handle the shipments. It is asserted for complainants that in the past embargoes laid by the steamer lines operating from Galveston

to New York have seriously interfered with the use of the water route, and that at times complainants have had thousands of tons of bullion tied up at Galveston on account of the inability of the steamer lines to handle it. Complainants ask for a rate of \$7.25 per ton from Douglas to Galveston, computed by adding 25 per cent to the division of \$5.80 accruing to the rail carriers out of the rail-and-water rate of \$8.55 in effect prior to June 25, 1918, with corresponding rates from Morenci, Globe, and Clarkdale.

Defendants object to the establishment of rates to Galveston on the ground that shippers might thereby be enabled to avoid payment of the through rates via all-rail and rail-and-water routes. However, a shipper is entitled to transportation at reasonable rates and an unreasonable rate can not be permitted to stand merely because if readjusted other rate adjustments may follow. *Auto Vehicle Co. v. C., M. & St. P. Ry. Co.*, 21 I. C. C., 286; *New Orleans Board of Trade v. L. & N. R. R. Co.*, 23 I. C. C., 429.

The fourth-class rate of \$1.975 per 100 pounds from Douglas to Galveston yields ton-mile earnings of 3.49 cents, and car-mile earnings based on an average loading of 44 tons of \$1.535. Complainant shows that under the proportions of the rates accruing to the carriers prior to June 25, 1918, the ton-mile earnings ranged from 5.8 to 7.73 mills from Douglas, Morenci, and Globe, Ariz., to Galveston, the corresponding car-mile earnings ranging from 23.3 to 30.7 cents. Using the same basis of division complainant shows that the ton-mile earnings from the three points named to Galveston under the present rates from those points to New York range from 11.71 to 13.03 mills and the car-mile earnings from 47.1 to 47.8 cents.

The distances from Douglas, Globe, Morenci, and Clarkdale to Galveston are 1,103, 1,119, 1,209 and 1,364 miles, respectively. Morenci is on a narrow-gauge line from which the bullion must be transferred to standard-gauge cars, and Clarkdale is 261 miles farther from Galveston than is Douglas.

The local rate on copper smelter products and zinc, in carloads, from Anaconda, Mont., to Galveston, Tex., is \$11.50 per ton, minimum weight 40,000 pounds, although it appears that there is substantially no movement under that rate. In *Tennessee Copper Co. v. S. Ry. Co.*, 41 I. C. C., 336, decided October 3, 1916, we found that rates on copper bullion ranging from \$6.40 to \$7 per ton from Copperhill, Tenn., to eastern points ranging from 990 miles to 1,133 miles distant were not shown to be unreasonable. The corresponding rates now applicable from Copperhill range from \$8.20 to \$9.50 per ton. However, those rates apply on traffic moving in large volume and in a territory that is, generally speaking, on a rate level somewhat lower than that applying in the southwestern territory.

The rates from the Arizona points to New York are established under rule 77 of our Tariff Circular 18-A, under which rule the carriers are obliged to establish the New York rates to Galveston upon reasonable request therefor.

Under all the facts and circumstances we are of opinion, and find, that the rates on copper bullion from the points named to Galveston, Tex., are unreasonable, and that reasonable rates per ton of 2,000 pounds for the future should not exceed the following:

To Galveston, Tex., from:

Douglas, Ariz.....	\$9. 75
Morenci, Ariz.....	10. 00
Globe, Ariz.....	10. 25
Clarkdale, Ariz.....	11. 50

An appropriate order will be entered.

COMMISSIONER DANIELS did not participate in the decision of this case.

57 I. C. C.

No. 10526.¹
ANACONDA COPPER MINING COMPANY ET AL.
v.
DIRECTOR GENERAL, ANN ARBOR RAILROAD
COMPANY, ET AL.

Submitted February 6, 1920. Decided June 2, 1920.

1. Rates on smelter products from numerous points of origin, principally in the west, to destinations chiefly in the east, found not to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial except as stated below.
2. Rates on smelter products, carloads, from points in Washington and Idaho found to have been and to be unduly prejudicial.
3. Rates on smelter products from points in Arizona and Texas to Galveston, Tex., found to be unreasonable, and reasonable maximum interstate rates prescribed.
4. Failure of defendants to establish refining-in-transit arrangement at Baltimore, Md., on shipments of smelter products moving from points principally in the west not found unreasonable, unjustly discriminatory, or unduly prejudicial.
5. Reparation denied.

Arthur B. Hayes, L. O. Evans, and Warren Nichols for complainants.

George E. Erb for Public Utilities Commission of Idaho, Montana Railroad Commission, and Nevada Public Service Commission; *Arthur A. Lewis* for the Public Service Commission of Washington; *Arthur B. Hayes, M. E. Whitehead, John H. Wourms, H. R. Macmillan*, and *Howat, Marshall, Macmillan & Crow* for other interveners.

James L. Coleman, B. W. Scandrett, J. G. McMurry, T. J. Norton, and *Charles Donnelly* for defendants.

W. A. Parker, R. V. Fletcher, A. P. Humburg and *Chas. J. Rixey, jr.*, for Director General of Railroads.

¹ This report embraces No. 10581, American Smelting & Refining Company et al. v. Director General, Ann Arbor Railroad Company, et al.

REPORT OF THE COMMISSION.

CLARK, *Chairman*:

The complaints in these proceedings were filed by corporations engaged in mining, concentrating, and smelting copper, lead, zinc, and other ores, and in refining the resulting products. Complainants in No. 10526 allege that the all-rail and rail-and-water rates on copper and zinc, in carloads, from Anaconda and Black Eagle, Mont., and on copper and lead, in carloads, from International, Utah, and Miami, Ariz., to points in the Chicago district, central freight association, eastern trunk line, and New England territories and on smelter products from Miami, Ariz., to Galveston, Tex., were and are unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the act to regulate commerce and section 10 of the federal control act. The Board of Railroad Commissioners of the state of Montana, Public Utilities Commission of the state of Idaho, Public Service Commission of Washington, United States Smelting, Refining & Mining Company, Northport Smelting & Refining Company, Pennsylvania Smelting Company, and L. Vogelstein & Company intervened in support of the complaints.

Intervener L. Vogelstein & Company challenges the rates on pig lead, in carloads, from Kellogg, Idaho, to all points on and east of the Missouri and Mississippi rivers and prays for the establishment of rates from Kellogg to said points that shall not exceed the rates on lead from Montana, Utah, and Arizona smelting points to the same destinations. The petition of this intervener includes a prayer for relief on account of alleged proposed increased rates from Kellogg to various destinations. No violation of the act to regulate commerce or the federal control act can be predicated upon the proposed action of the Director General or the carriers and the statutes make no provision for the issuance by us of injunctions or other like writs.

Intervener Northport Smelting & Refining Company alleges that the all-rail and rail-and-water rates on lead and lead bullion, in carloads, from Northport, Wash., to points in the Chicago district, central freight association, trunk line, and New England territories were and are unreasonable and that rates from Northport higher than those maintained from points in Montana and other states were and are unduly prejudicial, in violation of section 3 of the act to regulate commerce.

Complainants in No. 10581 attack the all-rail and rail-and-water rates on copper, lead, and zinc smelter products, in carloads, from smelting points, principally in the west, and from ports of entry

from the Republic of Mexico, to the refineries and from the refineries to destinations throughout the United States, and allege that the failure of defendants to establish in connection with through rates from the various points of origin a refining-in-transit arrangement at Baltimore, Md., is unjust and unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act.

The prayer of the complainants is for just and reasonable rates for the future, the establishment of a refining-in-transit arrangement at Baltimore, and reparation on shipments moving on and after June 25, 1918. In view of the close relationship of the issues and upon agreement of the parties the cases were consolidated for hearing and disposition. A report was proposed by the examiner and served upon the parties. Certain exceptions thereto were taken and argument thereon has been had. The statements of fact proposed by the examiner are substantially correct and with minor corrections and necessary amplifications they are made the basis of this report. Rates are stated throughout the report in amounts per ton of 2,000 pounds, unless otherwise indicated, and complainants and the intervening companies are referred to collectively as complainants.

The complaints are directed against the rates established pursuant to the requirements of General Order No. 28 of the Director General of Railroads, and against similar rates via such lines as were not under federal control. Before initiating the increased rates on smelter products the Director General consulted complainants and other smelting and refining companies with respect to the proposed changes. They were unwilling to accede to the increased rates now made the subject of complaint and asserted that there was no reason for an increase in the rates on their commodities greater than the increase of 25 per cent authorized, with few exceptions, for traffic generally. That contention is now urged before us, and it is also asserted that certain rates on complainants' products established on June 25, 1918, were not only excessive, unjust, and unreasonable, but were largely in excess of the increases prescribed in General Order No. 28 and therefore unauthorized and illegal. The general order referred to reads in part as follows:

Section 2. Commodity Rates. (Domestic).

(a). Interstate commodity rates on the following articles in carloads shall be increased by the amounts set opposite each:

* * * * *

COMMODITIES.

INCREASES.

Bullion, base (copper or lead), pig or slab, and other smelter products-----Twenty-five (25) per cent, except—1.

That rates from producing points in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington to New York, N. Y., shall be sixteen dollars and fifty cents (\$16.50) per net ton with established differentials to other Atlantic seaboard points, and 2. Rates from points in Colorado and El Paso, Tex., to Atlantic Seaboard points shall be increased six dollars and fifty cents (\$6.50) per net ton. Separately established rates used as factors in making through rates to the Atlantic seaboard shall be increased in amounts sufficient to protect the through rates as above increased.

* * * * *

(b) Interstate commodity rates not included in the foregoing list shall be increased twenty-five (25) per cent.

Complainants allege that under the terms of General Order No. 28 the rates on zinc should not have been increased to a greater extent than 25 per cent for the reason that there is no shipment of base-bullion zinc, the product shipped being a refined zinc produced electrolytically and known as prime western spelter. They further allege that the increased rates on smelter products from points in Colorado, Oklahoma, and other states to Atlantic seaboard points and from certain eastern points back to intermediate points were and are unlawful for the reason that the amount of the increase exceeds 25 per cent, which, it is argued, was prescribed by the general order.

The federal control act provides that during the period of federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices "by filing the same with the Interstate Commerce Commission." No order for the filing of rates as a condition precedent to the lawful initiation thereof is required by the act. The rates attacked as unlawful by reason of the alleged failure to observe the terms of General Order No. 28 were filed with us by the President through his duly appointed agent, and a failure to adhere strictly to the terms of a preliminary order of the Director General, which is not required by the act, and in the absence of

which complainants' contentions would be without foundation, can not be construed as defeating the validity of the rates concerned.

It appears that the intervening state commissions are interested primarily in the protection of the copper, lead, and zinc industries of their respective states. With the exception of the Montana commission no evidence was introduced in their behalf, although evidence was offered in behalf of the Arizona commission in No. 10492, *Phelps Dodge Corporation v. Director General*, 57 I. C. C., 714, the record in which was by agreement of the parties herein made a part of this record. For the Idaho commission it was said:

Our particular interest in this matter is the protecting of the development of the lead mining industry in the state of Idaho, which we feel will suffer by reason of any increase in freight rates, the increase in freight rates, as we contend, being reflected back and paid ultimately by the producers, the independent producers of which we have a great number within the state of Idaho.

Complainants' operations embrace the mining of the ore at various points, the shipment of the ore for short distances from those points of production to the smelters for treatment, shipment of the smelter products to the refineries for further treatment, and shipment thence to the points of consumption of the refined material. The smelters operated or used by complainants are located at various points throughout the United States, but principally in states west of the Mississippi River, and at Cananea and other points in northern Mexico. During the period covered by the complaints the smelters were in continuous operation, except that local conditions interfered somewhat with the operation of those located in Mexico, and the products moved in large volume.

Ores are designated as copper, lead, or zinc, according to the predominating metal content. Smelting is the process of separating the metal content from the ore. Smelter products are copper bullion, anodes, bars, blister, ingots, matte, pig, residue, slabs, and sulphates; lead bullion, bars, pig, and matte; zinc bullion or spelter, slabs, residue, dross, and dust; antimony bullion; and nickel sulphates. With few exceptions these products are not marketable in the form in which they leave the smelters, and must undergo further treatment at a refinery. It appears that in the treatment of the bullion, blister, and matte varying quantities of gold and silver are frequently obtained. The smelter products will be hereinafter referred to as copper, lead, or zinc bullion, or collectively as bullion, and the refined material will be referred to as copper, lead, or zinc.

The following tables compiled from an exhibit introduced by complainants are fairly illustrative of the rate situation prior and subsequent to June 25, 1918:

1. COPPER BULLION TO NEW YORK, N. Y.

	Rates.	Distance.	Earnings.		Average load per car in 1918.
			Car-mile.	Ton-mile	
		Miles.	Cents.	Mills.	Tons.
From Garfield, Utah.....	\$10.65	2,439	19	4.36	43.6
Do.....	\$16.50	2,439	29.5	6.76	43.6
From McGill, Nev.....	12.15	2,666	21.4	4.55	46.9
Do.....	16.50	2,666	29	6.19	46.9
From Hayden, Ariz.....	\$11.00	2,109	23.4	5.21	44.9
Do.....	\$16.50	2,109	35	7.82	44.9
Do.....	\$16.50	2,886	25.7	5.71	44.9
From El Paso, Tex.....	\$6.50	1,597	19.4	4.07	47.7
Do.....	\$14.00	1,597	41.8	8.76	47.7
Do.....	\$14.00	2,374	28.1	5.88	47.7
From Tacoma, Wash.....	12.00	3,110	16.6	3.86	43
Do.....	\$16.50	3,110	22.81	5.31	43

2. COPPER FROM TACOMA, WASH.

To New York, N. Y.....	\$12.00	3,110	16.60	3.86	43
Do.....	16.50	3,110	22.81	5.31	43
To Detroit, Mich.....	11.00	2,484	19.04	4.43	43
Do.....	\$13.80	2,484	23.88	5.55	43

3. LEAD BULLION TO NEW YORK.

From East Helena, Mont.....	\$10.15	2,466	18.6	4.11	45.3
Do.....	\$16.50	2,466	30.2	6.69	45.3
From Denver, Colo.....	7.65	1,925	15.9	3.97	40
Do.....	\$14.15	1,925	29.4	7.35	40
From Murray, Utah.....	\$10.65	2,434	18.2	4.33	41.7
Do.....	\$16.50	2,434	28.2	6.78	41.7

4. PIG LEAD FROM FEDERAL, ILL.

To New York, N. Y.....	\$3.90	1,152	13.2	3.39	39
Do.....	\$7.00	1,152	23.7	6.07	39
To Pittsburgh, Pa.....	3.00	631	18.5	4.75	39
Do.....	\$4.70	631	29	7.45	39

5. PIG LEAD FROM OMAHA, NEBR.

To Chicago, Ill.....	\$2.20	488	19.4	4.51	43
Do.....	\$3.40	488	29.9	6.97	43
To New York, N. Y.....	14.15	1,397	12.8	2.98	43
Do.....	\$6.40	1,397	25.8	6.01	43
To Cleveland, Ohio.....	13.40	827	17.7	4.11	43
Do.....	\$4.90	827	25.5	5.93	43

6. ZINC SPELTER TO NEW YORK, N. Y.

From Henryetta, Okla.....	\$6.90	1,537	19.3	4.49	43
Do.....	\$8.60	1,537	24.1	5.59	43
From Blende, Colo.....	\$8.15	1,966	12.4	4.15	30
Do.....	\$14.15	1,966	21.6	7.19	30

1 Rate prior to June 25, 1918.

2 Present rate.

3 Via Gulf of Mexico.

4 Distance computed by using 720 constructive miles, Galveston to New York, via Morgan line.

5 All rail.

With few exceptions rates in force prior to 1918 had been maintained without substantial change for more than 10 years. Complainants stress this fact as an indication that the western carriers, at least, were satisfied with the rates and that the traffic was bearing its share of the transportation burden. Indeed, it is argued for complainants that the rates in force prior to June 25, 1918, were unreasonably high not only when considered in and of themselves but when considered in comparison with other rates. It is shown, for example, that the car-mile revenues on bullion from representative points under the rates previously in force ranged from 16.22 cents to 21.4 cents for distances of from 2,666 miles to 3,180 miles, while the rates on other commodities established on June 25, 1918, yield car-mile earnings ranging from 10.05 cents on lumber to 22.55 cents on clover seed for similar distances. Similar comparisons are made as to shipments moving from 2,000 to 2,600 miles. For the transportation of lumber an average distance of 3,055 miles the car-mile revenue is 11 cents, using an average load of 24 tons. The rate on lumber from Kalispell, Mont., to New York is 77 cents per 100 pounds and from Seattle, Wash., to New York 80 cents per 100 pounds, or \$15.40 and \$16 per ton, respectively. Prior to June 25, 1918, the rate on copper bullion from Black Eagle, Mont., to New York was about 50 cents per 100 pounds; on wheat from Great Falls to New York 57 cents; and on flour 57.5 cents. The average distance of the bullion movement is approximately 2,500 miles.

We have frequently held that a prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of the reasonableness of that rate and certainly the existence of a lower rate in the somewhat remote past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove anything of value in ascertaining the reasonableness of rates in force during the period of federal control.

Defendants assert that the rates on bullion in force prior to June 25, 1918, were unwarrantably low and that it was necessary to increase them more than 25 per cent in order to bring them up to their proper level; that repeated attempts were made during a period of years prior to the date mentioned to increase the rates, but that industrial and carrier competition prior to the period of federal control compelled the maintenance of the lower rates under circumstances which the carriers could not control and which negative any presumption of reasonableness from the long-continued existence of those rates. It is shown that even a small increase of 50 cents per ton for transcontinental movements of bullion attempted in 1915

was protested against by the smelter interests and was subsequently abandoned by reason of carrier competition and other considerations. Defendants point out that the ton-mile earning on bullion from Denver, Colo., to New York, N. Y., a distance of 1,925 miles is 7.5 mills, the corresponding car-mile earning being 28.4 cents while the ton-mile earnings on other commodities moving in car-loads from Denver to New York range from 9.7 mills on dried beans to 18.4 mills on dry hides in bales, the car-mile earnings being 24.5 cents and 33.7 cents, respectively. It is also shown that the ton-mile earnings on iron and steel from Pittsburgh, Pa., to Denver and on structural iron from Chicago, Ill., to Denver, distances of 1,486 and 1,018 miles, respectively, are 13.4 mills and 15.1 mills, respectively, the corresponding car-mile earnings being 46.6 cents and 52.9 cents. The rate on bar iron from Pittsburgh to Spokane, Wash., is \$1.25 per 100 pounds, minimum weight 80,000 pounds. For the short-line distance of 2,301 miles this rate yields earnings of 10.86 mills per ton-mile and 43.46 cents per car-mile. From Chicago to Seattle, Wash., the rate on iron and steel articles is \$1.125, distance 2,173 miles, and the earnings 40.9 cents per car-mile and slightly over 1 cent per ton-mile. The ton-mile and car-mile earnings on bullion for the longer distances are lower than the earnings on structural steel, stoves and ranges, wrought-iron pipe, wool in grease, and other commodities. Of the commodities used for comparative purposes iron and steel articles and lumber probably most nearly approach the transportation characteristics of bullion. In *Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. R. Co.*, 14 I. C. C., 1, 13, we recognized the similarity of transportation characteristics as between copper and lumber. Lumber moves in both box cars and flat cars whereas bullion moves only in the former. It is shown that the box-car loading of lumber from the northwest has averaged about 33 tons although it is asserted that cars have been loaded as high as 77 tons. Lumber is a commodity of relatively low value and moves in large volume, the tonnage of lumber on the Northern Pacific Railroad alone exceeding the copper production of the world.

The record is replete with car-mile and ton-mile statistics, complainants relying largely upon the former and defendants upon the latter in substantiation of their assertions. We have frequently had occasion to comment upon the car-mile and train-mile revenue tests, and they have been found of substantial probative force in many situations. *National Hay Asso. v. M. C. R. R. Co.*, 19 I. C. C., 34, 47. *In re Advances on Coal to Lake Ports*, 22 I. C. C., 604, 620. We have also commented upon the limited value of ton-mile revenue comparisons, although of much value in many cases. The process of comparing rates by ton-mile figures is one by which those rates may be

brought down to the narrowest point of scrutiny and in this sense the ton-mile test is valuable, but it is only one test and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, regardless of how compulsory or imperious they may be. *Bus. Men's Asso. of Minn. v. C., St. P., Minn. & O. Ry. Co.*, 2 I. C. C., 52; *Coke Producers' Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125, 140; *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302, 317; *Springston Lumber Co. v. N. P. Ry. Co.*, 50 I. C. C., 591, 594.

Complainants point out that bullion is a most desirable commodity from a transportation standpoint; that the traffic has been eagerly sought by the rail carriers of the country as well as by water carriers operating through the Panama Canal and from the Gulf ports; that the commodity is loaded to the maximum carrying capacity of the cars; that the material may be and is transported in any kind of a car that can be locked and sealed; that it moves in large volume throughout the year; that the only risk assumed by the carriers in its transportation is that of theft, and that claims for loss have been negligible in amount. These assertions are not refuted by defendants, but it is shown in their behalf that copper, lead, and zinc bullion, and more especially copper bullion, are commodities of high value, a carload of copper bullion having a value at the time of hearing of approximately \$22,000. Lead, lead bullion, and zinc bullion or spelter are not so valuable, but the value of lead bullion may be considerably enhanced by the presence of precious metals. The commodities have for many years been grouped for rate-making purposes and that rate grouping is not here attacked. Copper bullion constitutes about 60 per cent of the tonnage moving under the rates in question. It is shown for defendants that the earnings on a carload of wheat valued at about \$75 a ton are only slightly in excess of those accruing on a carload of copper bullion valued at \$500 a ton and similar comparisons with the earnings on other commodities are offered. It is also shown by defendants that copper is rated fourth class in the governing classification and that the commodity rates on copper and copper bullion are only 33.4 per cent of the rates that would otherwise apply, while iron-pipe and structural-steel rates are 67.5 and 78.3 per cent, respectively, of their class rates. Copper and copper bullion ordinarily move under commodity rates. Value is an essential factor of a reasonable rate, and, as we said in *Advances in Rates—Western Case*, 20 I. C. C., 307, 355:

We can never depart from the *ad valorem* principle in the making of rates. No governmental railway system does. The national highways may as properly tax a carload of tea with some relation to its value as the state may tax an

57 I. C. C.

import on the same basis, or the toll road distinguish between the automobile and the wheelbarrow. In all charges of an arbitrary character where public policy is involved there is need that the greater burden shall fall upon those best able to support it.

However, value is only one of the elements that must be considered. Other elemental tests must be applied of which a comparison of revenue under the rates attacked with revenue derived by defendants from the transportation of other commodities under similar circumstances and conditions is one of considerable importance. *Pacific Creamery Co. v. S. P. Co.*, 34 I. C. C., 586, 591. Many comparisons of that character were submitted by the parties.

Numerous exhibits were introduced by complainants showing that within the last few years the cost to them of labor and materials has increased greatly, but it is conceded that defendants have also been subjected to rapidly mounting costs. Carriers can not undertake to equalize manufacturing costs through the adjustment of freight rates. *Iron Ore Rate Cases*, 41 I. C. C., 181, 214. While the shipper is entitled to a reasonable rate the carrier is at the same time entitled to a reasonable return. Carriers are entitled to reasonable rates for the service they render even though those rates may be such that shippers can not do business at a profit. *Railroad Commissioners of Florida v. Southern Express Co.*, 28 I. C. C., 634, 635. Commercial advantages and disadvantages are not factors that can have any great consideration by us in reaching conclusions as to the propriety of rate structures. *Illinois Coal Cases*, 32 I. C. C., 659, 680.

The government, on September 21, 1917, fixed the price of copper at 23.5 cents per pound. It is asserted by complainants that the price so fixed was lower than the price which had been previously obtained, but that notwithstanding that fact the transportation rates were subsequently increased an average of approximately 56 per cent. It is observed from the exhibits that the price of 23.5 cents was in excess of the average price obtained prior to 1916 and that the price of 26 cents per pound fixed by the government on July 2, 1918, was apparently greater than any price that had obtained prior to 1916, except that during a part of the year 1907 a price of 26.25 cents prevailed, which was followed, however, by a price of 14.625 cents in 1908. The average price for a period of 30 years, 1889 to 1918, inclusive, was less than 16 cents per pound. The price of 26 cents per pound represented an increase of 2.5 cents, while the increase in freight rates amounted to less than one-third of one cent per pound. It was testified in *Phelps Dodge Corporation v. Director General*, *supra*, that the increased price fixed on July 2, 1918, was intended to cover the increase in freight rates, and complainants in that case claim reparation only on shipments moving subsequently to January 1, 1919, the

date on which the price of 26 cents expired. Complainants in the instant cases deny that the increased price was intended to cover the increases in transportation charges and claim reparation from the date when the increased rates were established. There are no figures of record which give the cost of producing a unit quantity of copper or other smelter product. In any event it must be presumed that the price-fixing activities of the government were fairly conducted, and the presumption is strengthened by the fact that there is no showing that the price fixed for copper did not cover the cost of production plus a reasonable profit. It may also be observed that while an increase of more than 25 per cent was imposed upon the bullion traffic, smelter products were not alone in taking increases, in many instances, of more than 25 per cent under General Order No. 28. Low-grade commodities such as coal and coke, moving for short distances, were subjected to increases of more than that percentage and the application of the provisions of the general order referred to resulted in increases of 80 to 100 per cent on sugar and more than 100 per cent on certain commodities of less value than bullion that move for substantial distances, notably corn, oats, rye, and barley. *National Council Farmers' Assos. v. Director General*, 56 I. C. C., 399. Many other articles of commerce have been subjected to successive increases of 5, 15, and 25 per cent and complainants' argument that the bullion rates should not have been increased a greater percentage than were the rates on other commodities would lead logically to a holding that bullion should have been subjected at least to those successive increases instead of having been maintained on substantially the same level for more than 10 years.

Complainants seek the establishment of rates on smelter products in carloads from Miami, Ariz., Hayden, Ariz., and El Paso, Eagle Pass, Laredo, and Brownsville, Tex., to Galveston, Tex. No commodity rates are in effect from the points named to Galveston and it is testified for complainants that by reason of the rate adjustment it has been necessary to move the bullion via Tampico, Mexico, and other routes. Defendants object to the establishment of local rates to Galveston on the ground that the smelter products might be moved to Galveston on the basis of those rates and sent forward in privately owned or privately chartered bottoms, thereby enabling shippers to avoid payment of the through rates via all-rail and rail-and-water routes. That contention can not be seriously considered, for, as we have frequently said, shippers are entitled to reasonable rates and if the rates to Galveston are unreasonable it is our duty to require an adjustment that shall be consonant with the provisions of the law. The fact that there is a water route affording a low rate from a given point to a certain destination does not justify us in permitting the

rail carriers to charge an unreasonable rate to that given point. *So. Pacific Co. v. Interstate Comm. Comm.*, 219 U. S., 433. The following table showing rates applicable on smelter products via Galveston, Tex., was introduced by complainants:

To New York and Perth Amboy, from—	Distance to Galveston.	Rail-and-ocean rate per ton.	Rail proportion.	Rail earnings per car-mile.	Rail earnings per ton-mile.
	<i>Miles.</i>			<i>Cents.</i>	<i>Mills.</i>
Hayden, Ariz.....	1,389	\$16.50	\$12.084	39.06	8.69
El Paso, Tex.....	877	14.00	7.44	40.12	8.48
Eagle Pass, Tex.....	422	14.00	7.44	69.64	17.6
Laredo, Tex.....	371	14.00	6.908	66.96	16.9
Brownsville, Tex.....	424	14.00	6.968	64.91	16.4

The following statement of local and proportional rates, in amounts per 100 pounds, on smelter products from the points named to Galveston is fairly illustrative:

	Copper ¹ (4th class).	Lead ² (5th class).	Zinc ³ (5th class).
Hayden, Ariz.....	\$2.435	\$2.005	\$2.005
El Paso, Tex.....	1.105	.865	.865
Eagle Pass, Tex.....	.965	.75	.75
Laredo, Tex.....	.93	.75	.75
Brownsville, Tex.....	.975	.775	.775

¹ Copper bars, rough cast, cakes, ingots, pigs, slabs, carload, minimum weight 40,000 pounds.

² Lead, pig or slab, carload, minimum weight 40,000 pounds.

³ Zinc, anodes, bar, rod, plate sheet, carload, minimum weight 36,000 pounds.

The rates to Galveston now effective yield ton-mile earnings ranging in round numbers from 2 cents to 5 cents and car-mile earnings based on a load of 44 tons of from 88 cents to \$2.20. The rate on copper smelter products and zinc in carloads from Anaconda, Mont., to Galveston, Tex., is \$11.50 per ton, minimum weight 40,000 pounds, although it appears that there is no movement under that rate.

In *Tennessee Copper Co. v. S. Ry. Co.*, 41 I. C. C., 336, decided October 3, 1916, we found that rates on copper bullion ranging from \$6.40 to \$7 per ton from Copperhill, Tenn., to Atlantic seaboard points ranging from 990 miles to 1,133 miles distant were not shown to be unreasonable. The rates now applicable from Copperhill, are \$9 per ton to New York and Perth Amboy for distances of 844 and 830 miles, respectively, \$9.50 to Boston, Mass., for a distance of 1,076 miles; \$8.50 to Philadelphia, Pa., for a distance of 752 miles; and \$8.20 to Baltimore for a distance of 656 miles. The rates from the Michigan producing points are on substantially the same level. Those rates apply on traffic moving in large volume and in a territory where the general level of rates is lower than in the southwestern territory.

We are of opinion, and find, that the interstate rates per ton of 2,000 pounds on smelter products from the points named to Galveston, Tex., are unreasonable and should not exceed the following:

To Galveston, Tex., from:

Hayden, Ariz.....	\$11.50
Miami, Ariz.....	10.25
El Paso, Tex.....	8.75
Eagle Pass, Tex.....	7.00
Laredo, Tex.....	7.00
Brownsville, Tex.....	7.00

It is asserted for complainants that for many years prior to June 25, 1918, there was an established and definite relationship between the Michigan rates on copper bullion and the rates on copper bullion from the far western smelters in Montana, Washington, and Utah, which relationship was destroyed by the establishment of the rates here attacked thereby giving an undue advantage to Michigan producers. Discrimination is also alleged as between states in the west, but while certain witnesses expressed a preference for the relationship of rates existing prior to June 25, 1918, the record is practically devoid of evidence on this issue. It is stated for defendants that the blanket adjustment of rates from western states is responsive to the contentions of complainants that competition between copper producers is such that practically the same basis of rates should be maintained. In fact, in the instant cases, it is shown that there is keen competition in the sale of copper, especially in the principal markets of New York and New England. However, the evidence adduced is not sufficient to warrant a finding on the issue of undue prejudice as between the western states. The following statement compares rates on copper bullion from Anaconda, Mont., to New York with those from Houghton, Mich., to the same destination:

Rates on copper bullion from Anaconda and Houghton to New York.

	From Anaconda, Mont.		From Houghton, Mich.		
	All rail.	Lake and rail via Duluth.	All rail.		Lake and rail.
			Dec. 1 to Mar. 31.	Apr. 1 to Nov. 30.	
Rate.....	\$10.00	\$9.20	\$7.10	\$5.70	\$4.00
Effective date.....	8/9/09	8/9/09	6/5/11	6/5/11	10/26/12
Rate.....	\$10.50	\$9.35	\$8.50	Cancelled.	.....
Effective date.....	4/17/15	5/1/17	3/1/13	3/28/13	.....
Rate.....	\$10.15	\$9.50	.....	\$8.50	\$4.00
Effective date.....	5/17/15	8/6/17	.....	5/13/13	3/30/17
Rate.....	.....	\$10.15	.....	\$7.10	\$5.60
Effective date.....	.....	5/28/18	.....	8/17/13	8/1/17
Rate.....	\$16.50	\$16.50	\$10.60	\$8.90	\$6.70
Effective date.....	6/25/18	6/25/18	6/25/18	6/25/18	5/25/18
Rate.....	\$15.70	\$15.70	\$11.40	\$9.60	\$8.40
Effective date.....	.....	5/24/19	10/25/18	10/25/18	7/25/18
Percentage of increase.....	65	70.6	60.5	68.4	110

¹ Via U. S. R. R. Administration (N. Y.-N. J. Canal Section), \$15.10.

² Via U. S. R. R. Administration (N. Y.-N. J. Canal Section), \$7.80.

Comparison of earnings from Michigan and Montana points to New York, N. Y., all rail.

	Distance.	Rate per ton of 2,000 pounds.	Earnings per ton-mile.
	<i>Miles.</i>		<i>Mills.</i>
Houghton, Mich.....	1,320	\$11.40	8.63
Dollar Bay, Mich.....	1,325	11.40	8.6
Lake Linden, Mich.....	1,322	11.40	8.62
Hancock, Mich.....	1,321	11.40	8.62
Anaconda, Mont.....	2,438	16.50	6.76
Butte, Mont.....	2,413	16.50	6.88
Black Eagle, Mont.....	2,398	16.50	7.05

Since our decision of December 2, 1912, in *Michigan Copper & Brass Co. v. D., S. S. & A. Ry. Co.*, 25 I. C. C., 357, the winter rates from Michigan all rail have been increased 60.5 per cent and the summer rates all rail 68.4 per cent while the rates from Montana have been increased 65 per cent. The lake-and-rail rate from Montana has been increased 70.6 per cent while the lake-and-rail rate from Michigan has been increased 110 per cent. The ton-mile earnings on the copper traffic from Michigan to New York average 8.59 mills, while from Montana they average 6.88 mills. It is not shown that there is or has been a definitely established relationship as between the rates referred to, but if such a relationship did exist no unjust discrimination or undue prejudice appears by reason of the rate changes referred to.

The present rate on lead smelter products, including pig lead from Northport, Wash., and Kellogg to Chicago, for example, is \$13.10 per ton, whereas the rate from Montana is \$11.50 per ton, although points in the states of Washington and Idaho were blanketed with points in other states in the establishment of rates to Atlantic seaboard territory. The interveners compete with producers in Montana and other states in the common markets embraced within the territory on and east of the Missouri and Mississippi rivers. Points in the states of Washington, Idaho, and Montana take the same rates on westbound traffic, and counsel for the Director General argues in favor of a blanket adjustment which includes those states on traffic to the Atlantic seaboard. We are of opinion, and find, that under all the circumstances the maintenance of rates on smelter products, including pig lead and lead bullion, from points in the states of Washington and Idaho to points on and east of the Missouri and Mississippi rivers higher than the rates contemporaneously maintained from points in Montana, Utah, and Arizona to the same points of destination was and is unduly prejudicial to such points in Washington and Idaho. In the absence of proof of damage, reparation is denied.

Complainants in No. 10581 seek the establishment of a refining-in-transit service at Baltimore on smelter products. The plant at that point is a copper refinery, established many years ago, is one of the largest in the world and refines the product of several smelters. Shipments of smelter products are transported to Baltimore on the basis of the rates applicable from points of origin to that point, there refined, and subsequently shipped to points of consumption in New England, New York, and Philadelphia territories at the rates applicable on the refined product from Baltimore to those points, the through charges to New England being \$4.50 per ton in excess of the corresponding charges through Perth Amboy, N. J. It is pointed out that refining in transit and subsequent forwarding of the product on the basis of the through rate is permitted without additional charge at South Chicago, Ill., East Chicago, Ind., Grasselli, Ind., Springfield, Ill., East St. Louis, Ill., St. Louis, Mo., Kansas City, Mo., and Omaha, Nebr. At certain other points refining in transit is permitted at additional charges ranging from 20 cents to 50 cents per ton. The evidence indicates, however, that the only points at which copper is refined under a refining-in-transit privilege are Nichols Siding, N. Y., Chrome, N. J., and Perth Amboy, N. J. Complainants express a willingness to pay 50 cents per ton for the transit service at Baltimore.

The refining plant at Perth Amboy is owned by complainant American Smelting & Refining Company, but more than 55 per cent of the smelter products of that company is refined at Baltimore. Defendants object to the establishment of a refining-in-transit privilege at Baltimore on the ground that it would deplete their revenues, and for the additional reason that an unreasonably long out-of-line haul would be required. This would be 85 miles on shipments moving to Philadelphia, New York, or New England via the Pennsylvania Railroad. The Baltimore & Ohio Railroad does not haul the New England traffic through Baltimore. Operating arrangements and tariff provisions require delivery to its connections at other junctions, and the route via Baltimore would be about 65 miles longer. The maximum out-of-line haul on smelter products moving to New England is about 18 or 20 miles through the Perth Amboy refineries. Defendants contend that the existence of transit arrangements at other points has no direct bearing upon the issue for the reason that those points are all on the direct routes or substantially so. They assert that the trunk lines reaching Baltimore take no part in the refining services at Perth Amboy and other points, do not participate in the New York rate, and do not have the advantage of terminal allowances accorded to carriers reaching those points. It also appears that at Baltimore there is the inter-

vention of an additional carrier, the Canton Railroad, over which a portion of the traffic must pass. The evidence fails to indicate that the rates to and from Baltimore are or have been unjustly discriminatory or unduly prejudicial. In fact, complainants' principal witness disclaimed any charge of unjust discrimination as between Baltimore and Perth Amboy. Unless, therefore, the rates to and from Baltimore are found unreasonable there is no basis on which a finding favorable to complainants' prayer for transit service at Baltimore could rest. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.*, 53 I. C. C., 197. It is well established that a carrier is entitled to reasonable compensation for each service rendered. For services that it may render or procure to be rendered off its own line, or outside the mere matter of transportation over its line, it may charge and receive compensation. *Interstate Commerce Commission v. Stickney*, 215 U. S., 105; *Royal Milling Co. v. G. N. Ry. Co.*, 41 I. C. C., 29. The charge of 50 cents per ton suggested by complainants is less than the present switching charge between certain points within the switching limits of Baltimore. The evidence fails to show that the rates from points of origin to Baltimore or on refined copper from Baltimore are or have been unreasonable. Reasonable routes now exist in connection with which transit services are accorded on the basis of the through rates, and in the absence of any violation of the requirements of the act to regulate commerce or the federal control act complainants' prayer for transit service at Baltimore must be denied.

Under all the circumstances and conditions we are of opinion, and find, that the rates complained of were not and are not unreasonable, unduly prejudicial, or unjustly discriminatory except as hereinbefore noted, and that the failure of defendants to establish refining-in-transit service at Baltimore is not shown to have been or to be unreasonable or to subject complainants to unjust discrimination or undue prejudice.

Appropriate orders will be entered.

COMMISSIONER DANIELS did not participate in the decision of these cases.

No. 10877.

NATIONAL SUPPLY COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted May 4, 1920. Decided June 1, 1920.

Rates on anthracite coal from certain points in Pennsylvania to destinations in Iowa, Kansas, Missouri, and Nebraska not found unreasonable or unduly prejudicial. Complaint dismissed.

R. W. Smiley for complainant.

A. B. Enoch for defendants.

Frank Lyon for Northwestern Coal Dock Operators' Association; and *R. W. Ropiequet* for Illinois Coal Traffic Bureau, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

CLARK, Chairman:

The issues here presented were made the subject of a proposed report by the examiner, and no exceptions thereto were filed by the parties.

Complainant is a corporation dealing in anthracite and bituminous coal, lumber, and building material at Lincoln, Nebr. By complaint seasonably filed it alleges that the rates on anthracite coal from Coxtan, Dunmore, and other points in Pennsylvania to destinations on lines of the defendants in Iowa, Kansas, Missouri, and Nebraska are unjust and unreasonable because the increases under General Order No. 28 of the Director General were applied separately to each factor of the through rates instead of being added but once to the combination; unduly prejudicial by reason of the fact that contemporaneously a single increase was made on the combination through rates applicable to bituminous coal and by-product coke. A violation of the fourth section is also alleged. Reparation is asked. The Northwestern Coal Dock Operators' Association and the Illinois Coal Traffic Bureau intervened.

General Order No. 28 provided that increases should be effected on coal rates by adding to each such rate in effect on June 24, 1918, certain specific amounts, dependent upon the base rate, as follows:

Where rate is 0 to 49 cents per ton, increase of 15 cents per net ton.

Where rate is 50 to 99 cents per ton, increase of 20 cents per net ton.

Where rate is \$1.00 to \$1.99 per ton, increase of 30 cents per net ton.

Where rate is \$2.00 to \$2.99 per ton, increase of 40 cents per net ton.

Where rate is \$3.00 or higher per ton, increase of 50 cents per net ton.

The method of increasing the rate from Dunmore, Pa., to Omaha, Nebr., will be taken as illustrative of the manner in which rates were constructed from points in Pennsylvania to destinations in Iowa, Kansas, Nebraska, and Missouri. Prior to June 25, 1918, the combination through rate on anthracite coal from Dunmore to Omaha was \$6.23 per net ton via either Chicago or St. Louis. The rate to Chicago was \$3.90 per long ton, equivalent to \$3.48 per net ton, and the rate beyond was \$2.75 per net ton. The rate to St. Louis was \$4.40 per long ton, equivalent to \$3.93 per net ton, and the rate beyond was \$2.30 per net ton. On June 25, 1918, the rates to Chicago and St. Louis were increased to \$4.50 per long ton, equivalent to \$4.02 per net ton, and \$5 per long ton, equivalent to \$4.46 per net ton, respectively. Contemporaneously the component of the combination through rate beyond Chicago was increased to \$3.20 per net ton, and the component beyond St. Louis, to \$2.70 per net ton. This resulted in the establishment of combination through rates from Dunmore to Omaha of \$7.22 per net ton via Chicago, and \$7.16 per net ton via St. Louis, the Missouri, Kansas & Texas to Kansas City, Mo., and certain of the defendant lines beyond.

On July 2, 1918, by Freight Rate Authority No. 10, of the Director General, it was directed that when the total charges on through shipments of certain commodities, including coal, were based on combinations of separately established rates applying to and from junction points, the rate as increased by the general order should be determined by adding to the through combination in effect on June 24, 1918, the specific increase applicable to the amount thereof. In pursuance of this direction, a number of the tariffs of carriers operating west of Chicago and St. Louis were amended to provide a single increase on coal in cases where the movement was under combination rates. On November 28, 1918, a combination through rate of \$6.70 per net ton, Dunmore to Omaha, was established. On January 10, 1919, the same rate was established via St. Louis, the Missouri, Kansas & Texas to Kansas City, and certain defendant lines beyond. On January 15, 1919, the Chicago, Milwaukee & St. Paul established the same rate via Chicago and its line. With the exception of the latter carrier, none of the lines

publishing rates from Chicago to Omaha in individual issues amended its tariffs to provide for the construction of combination rates as required by Freight Rate Authority No. 10.

On April 22, 1919, by Freight Rate Authority No. 6945, the Director General instructed the carriers to provide for double increases, where under Freight Rate Authority No. 10 they had provided for single increases on anthracite coal from the territory east of the Indiana-Illinois state line and Lake Michigan destined to territory west of Mississippi River crossings, Chicago, other ports on the west shore of Lake Michigan, and other points of interchange between eastern and western railroads. In compliance with these instructions the double increases were restored. This resulted in a rate of \$7.22 per net ton via all lines to Omaha.

It is contended for complainant that the intent of General Order No. 28 was to apply the specific increases named therein to all through coal rates, irrespective of whether they were joint rates or constructed by combination of separately published factors; and that, accordingly, an exception to the established rule in the case of anthracite coal is unwarranted. It is urged, moreover, that we must construe the general order in order to determine the propriety of the double increase. The lawfulness of the rates, however, can not be determined entirely by a construction of General Order No. 28.

Most of the carriers operating west of Chicago considered Freight Rate Authority No. 10 as inapplicable to anthracite coal, by reason of the fact that its application to the all-rail rates would have disrupted the relationship which existed between those rates and the lake-and-rail rates via Buffalo and the docks on Lakes Superior and Michigan. Accordingly, these carriers did not comply literally with that order. Their construction of the general order was in accord with the action subsequently taken by the Director General.

As a general rule, the rail rates on coal from the docks and from rate-breaking points, such as Chicago, on all-rail movements to destinations in the states named in the complaint are, and since 1915 have been, established on the same basis. The bulk of the anthracite-coal movement, aside from that to Chicago, Milwaukee, and adjacent territory, destined to points west of Chicago, moves via the docks. In *Coal Rates to the Northwest*, 53 I. C. C., 590, we held that no established relationship had existed between the rail-lake-and-rail rates on bituminous coal from mines in Ohio, Pennsylvania, West Virginia, and Kentucky to points in the northwest and the all-rail rates on the same commodity from mines in Indiana and Illinois to the same destinations. The portion of the lake-and-rail rates accruing to the water carriers was not and is not subject to our jurisdiction.

tion. The relationship urged in behalf of defendants is not controlling here.

The complaint places in issue the reasonableness of rates on anthracite coal from points in Pennsylvania to all destinations in Iowa, Nebraska, Missouri, and Kansas on nine trunk lines named. Complainant, on the hearing, offered no evidence for the purpose of showing that the rates in question were unreasonable *per se* and based its case solely upon the contention that the application of the double increase was unreasonable.

Ninety per cent of the coal handled by complainant is disposed of in Nebraska and Iowa. As evidencing the reasonable level of the rates under attack, defendants introduced comparisons of the rates on anthracite from Chicago to representative points in Iowa and Nebraska with similar rates from anthracite districts in Pennsylvania to destinations in Ohio which show that for approximately the same distances the factor of the rates assailed west of Chicago is lower than certain rates in trunk line and central freight association territories.

Under General Order No. 28, the increase in the rate from the anthracite fields to Lincoln aggregated 14 per cent, as compared with 15 per cent to Chicago and St. Louis, 19 per cent to Philadelphia, and 21 per cent to Buffalo and Baltimore.

In the sale of anthracite complainant competes with the docks, with dealers located at points on the Missouri River and at Chicago, and with dealers who ship directly from Pennsylvania. During the year 1919 complainant sold 40,000 tons of anthracite in competition with the docks at prices, on the average, 50 cents per ton higher than the dock price. This is said to have been due to the superior quality of the coal sold by complainant. Its competitors are uniformly subjected to the double increase in rates. Since the removal of the restrictions of the Fuel Administration complainant has transacted a normal business in anthracite coal. The double increase applied on bituminous as well as anthracite coal, except to interior Nebraska points, to which there is no movement of bituminous coal from points east of the Indiana-Illinois state line.

Such fourth section departures as existed have been adjusted and need not be further considered.

Upon all the facts of record we find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial.

The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1166.
NEWSPAPERS ON PASSENGER CARS.

Submitted May 20, 1920. Decided June 7, 1920.

Proposed increased rate on newspapers transported in passenger cars between stations on the Kansas City, Kaw Valley & Western Railway, Kansas City, Mo., to Lawrence, Kans., inclusive, found not justified, and suspended schedule required to be canceled.

O. Q. Clafin for Kansas City, Kaw Valley & Western Railway Company, respondent.

Frank M. Lowe for Kansas City Post and Kansas City Star, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

By DIVISION 3:

The issues here presented were made the subject of a proposed report by the examiner. No exceptions thereto were filed by the parties.

By schedule filed to take effect February 28, 1920, the respondent, Kansas City, Kaw Valley & Western Railway Company, a carrier not under federal control, proposed an increased rate on newspapers carried in passenger cars between stations on its line. Upon protest of publishers of daily newspapers at Kansas City, Mo., the schedule was suspended until June 27, 1920, and later suspended until July 27, 1920.

The present schedule provides a rate of 0.5 cent per pound on newspapers carried on passenger cars, when shipped by publisher or news companies, forwarded on day of issue, between all stations on respondent's line. It is proposed to increase this rate to 1 cent per pound.

The respondent has an electric line about 40 miles in length, extending from Kansas City to Lawrence, Kans. So far as the record indicates the only newspapers transported under the present rate are the Kansas City dailies. They are brought to the car at Kansas City by protestants, loaded in the front end of the car, and unloaded through the side door in the center of the car at various points along the line by the conductor, who is obliged to pass through the aisle to the front door of the car to get them. The morning papers are carried on a car leaving Kansas City at 6.30 a. m., and the evening papers on a car leaving at 2.30 p. m.

It is testified for respondent that the car carrying the evening papers is usually crowded and that the papers occupy seating space for about 14 people and standing room for 10 more. It is further testified that the traffic on this car has been constantly increasing until the point has been reached where it will be necessary to run an additional car or trailer, for which a full crew is required in Kansas, but that this additional car would not be needed for the present if the space occupied by newspapers were available for passengers. The cost of operating an additional car is estimated by respondent at \$532.27 per month, with no immediate prospect of increased passenger business at the hours when the papers leave. The present rate has been in force since 1914, and it is testified that it is the only rate in respondent's tariff which has not been increased since that time. The average monthly revenue derived from the newspaper traffic during the year 1919 was \$235.90.

Protestants cite a rate of 0.5 cent per pound on newspapers in passenger cars over the lines of the Kansas City, Clay County & St. Joseph Railway between Kansas City and Excelsior Springs, Mo., 28.24 miles, and between Kansas City and St. Joseph, Mo., 52.42 miles. Except that its cars are provided with separate compartments for passengers and express or baggage, the service performed by that road appears to be similar to that performed by respondent. It is also shown that a 0.5-cent rate applies over the Missouri & Kansas Railway, an electric line, between Kansas City and Olathe, Kans., a distance of 23.4 miles. The character of the service on this road is not stated. Protestants further call attention to the rate of 0.5 cent per pound "for each company carrying" maintained by the American Railway Express Company applying on newspapers forwarded on day of issue between all points where the first-class rate does not exceed \$4.50 per 100 pounds and when no wagon service is rendered and embracing practically all territory in the United States east of the Rocky Mountains.

Aside from the evidence introduced to show that an additional car would soon be required which probably would not be necessary but for the newspaper traffic respondent made no attempt to justify the proposed rate. The fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for the proposed increased rate on newspapers; it must be shown that the rate itself would be reasonable for the service rendered.

We find that the proposed increased rate has not been justified. An order requiring the cancellation of the suspended schedule will be entered.

No. 10420.

DONNER STEEL COMPANY, INCORPORATED,
v.
DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 17, 1919. Decided June 7, 1920.

Practice of defendants to spot cars or make an allowance for spotting cars at the plants of complainant's competitors in the Buffalo rate district while refusing to spot cars or make an allowance therefor at complainant's plants in that district found to be unduly prejudicial. Complainant not shown to have been damaged.

Frederick C. Slee and Ralph Ulsh for complainant.

R. W. Barrett for Lehigh Valley Railroad Company and Director General of Railroads.

T. H. Burgess for Erie Railroad Company; *J. M. Sternhagen* for New York Central Railroad Company; *W. F. Strang* for Buffalo, Rochester & Pittsburgh Railway Company; *Louis L. Babcock* for South Buffalo Railway Company; and *Douglas Swift* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, DANIELS, AND WOOLLEY.

By DIVISION 1:

Complainant, hereinafter called the Donner company, is a corporation engaged in the manufacture of pig iron, finished and unfinished steel products, and ferromanganese. It has two plants, one at Buffalo, N. Y., and the other a few miles east thereof at North Tonawanda, N. Y., in the Buffalo rate district. By complaint, filed January 17, 1919, as amended March 3, 1919, it alleges that the defendants refuse to spot cars within complainant's plants or to pay complainant for the cost of performing such services although they do spot cars within the plants of complainant's competitors or in lieu thereof allow to said competitors the cost of such spotting. We are asked to enter an order requiring the defendants to spot cars for complainant by placing within its plants all inbound loaded cars at points of unloading and all empty cars for outbound shipments at loading platforms; or, to pay to complainant the reasonable cost of doing this

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work. Violations of sections 1, 2, and 3 of the act are alleged and reparation is asked for the period of two years prior to the filing of the complaint.

Complainant's plant at Buffalo is on the Buffalo River. It embraces blast furnaces, pig-casting machines, gas producers, open-hearth furnaces, steel mills, storage houses, and other necessary structures; it has a dock for unloading ore and limestone from lake vessels and a system of tracks of standard and narrow gauge, standard-gauge tracks extending to all loading and unloading points within the property. Ore and limestone, brought in by water, are unloaded at the dock; coal, coke, and scrap iron are brought in by rail. Most of the products of the mill move out by rail. These are pig iron; unfinished steel, such as ingots, billets, blooms, and slabs; and finished steel, in the form of plates, bars, angles, shapes, and the like. This Buffalo plant ships over all trunk lines serving Buffalo, and has direct connection with the rails of the Delaware, Lackawanna & Western, of the Buffalo, Rochester & Pittsburgh, and of the South Buffalo roads. The main line of the Delaware, Lackawanna & Western passes over the plant at an elevation of about 25 feet. There is no physical connection with this elevated track, but near one end of the plant there is an incline connecting with interchange tracks adjoining the property. Interchange with the Buffalo, Rochester & Pittsburgh and South Buffalo lines is effected outside the plant inclosure and with the Delaware, Lackawanna & Western at the gate of the plant. Beyond these interchange tracks all movements of cars to and within the plant are made by the Donner company with its own power. The average haul on inbound commodities interchanged with the Buffalo, Rochester & Pittsburgh is about 5,300 feet; with the South Buffalo, about 2,700 feet; and with the Delaware, Lackawanna & Western, about 2,500 feet. On outbound commodities the average haul is 7,500 feet to the Buffalo, Rochester & Pittsburgh; 3,900 feet to the South Buffalo; and 2,200 feet to the Delaware, Lackawanna & Western. The average haul on all commodities to and from all connections is about 4,000 feet. All inbound traffic, with the exception of coal and coke, and all empty cars for loading and outbound loaded cars are weighed by the Donner company on its own track scales. Coal and coke are weighed periodically. No allowance is received from the trunk lines for the interchange switching.

The plant at North Tonawanda is located on the Niagara River and consists of two blast furnaces with the accompanying cast house, boiler house, engine house, and other necessary buildings. At this plant ore, coke, coal, and limestone move inbound by rail; and pig iron and ferromanganese move outbound. There is a system of

plant tracks extending to all buildings and loading or unloading points within the plant property, and these tracks connect with the rails of the New York Central, of the Lehigh Valley, operating over the New York Central under trackage rights, and of the Erie Railroad. The main line of the New York Central extends along the eastern boundary of the North Tonawanda plant, and the main line of the Erie Railroad passes between separate parts of the plant property on its own right of way. The point of interchange with the New York Central, and, therefore, with the Lehigh Valley, is outside the plant property on the north. The interchange with the Erie is made at or near the plant gate. All movements of cars between these interchange points and points of placement within the plant are made by the Donner company with its own power. The average haul on inbound commodities interchanged with the New York Central and Lehigh Valley is 2,950 feet, and with the Erie 2,550 feet. On outbound commodities the average haul is 2,400 feet to the New York Central and Lehigh Valley, and 1,650 feet to the Erie. The average haul on all commodities to and from all connections is 2,387 feet. All cars, loaded and empty, are weighed by the Donner company on its own scales. No allowance is received from the trunk lines for interchange switching.

It is contended by complainant that there is nothing in the physical layout of the plants or plant tracks, either at Buffalo or at North Tonawanda to prevent the trunk lines from doing the spotting work. On the other hand, the defendant trunk lines aver that while it would be practical to operate a small switch engine over most of the tracks in the plants of the Donner company, some of them are in poor condition, the curves not properly aligned, and that frequent derailments would be the result of an attempt to operate over them with standard engines. The record, as a whole, does not support the position taken by defendants. Switch engines such as are in ordinary use by the carriers can negotiate all necessary tracks and curves in the Donner plants.

Prior to May 11, 1917, the points of interchange at the Buffalo plant of the Donner company were inside the plant inclosure; on and after that date interchanges were made outside the plant inclosure, trunk line crews refusing to perform service within the plant. This refusal was alleged to be based upon the unsafe condition of the Donner tracks and the nonunion character of Donner transportation employees; labor troubles, however, were at the bottom of this refusal. The change was made under a compromise and was limited to 60 days; it has been continued, however, by agreement of all interested parties.

The record shows that at many furnaces and steel mills with which the Donner company is in competition, the defendant trunk lines perform spotting service, or pay the industry for doing it. These competing plants are located in the Pittsburgh, Shenango, and Mahoning Valley districts in Pennsylvania; at Youngstown and Cleveland, Ohio; at other points in Ohio and Pennsylvania; and at Buffalo. The natural markets for the Buffalo and North Tonawanda plants are in Pennsylvania, New York, New Jersey, and New England, to which the rates from Buffalo are lower than from most of these competitive plants; and the most direct competition met by the Donner company is with the blast furnaces and steel mills in the Buffalo district. All iron and steel plants in the Buffalo rate district are on an exact parity with respect to freight rates, inbound as well as outbound. Competitors of complainant in the Buffalo rate district are the Buffalo Union Furnace Company, Wickwire Steel Company, Lackawanna Steel Company, and the Rogers-Brown Company.

The Buffalo Union Furnace Company operates a blast furnace at Buffalo for the manufacture of pig iron. It was formerly served by its incorporated line, the Buffalo Union Terminal Railroad, to which it leased its plant, tracks, and equipment. In 1917 the incorporated line ceased operations and the furnace company took over the operation of all tracks and equipment and has since performed interchange switching service as well as intermill work. The trunk line connections of the Buffalo Union Furnace Company are the Erie and the New York Central railroads. Traffic is also interchanged with the Delaware, Lackawanna & Western and the Lehigh Valley roads through intermediate switching. The interchange tracks are located on the plant property and, from these, cars are switched by industry power to and from points of placement within the plant. The distances covered by these movements range from 1,000 feet to 3,000 feet. The principal inbound commodities by rail consist of coke and coal. Ore and limestone are brought in by vessel and unloaded on a dock owned by the industry. Outbound pig iron is sold principally in eastern Pennsylvania, New York, New Jersey, and New England. For the last three years the trunk lines have paid the furnace company an allowance of 90 cents a car for spotting service done by it.

The Wickwire Steel Company's plant is located at Tonawanda, N. Y., and makes pig iron and steel products. Inbound commodities are iron ore, limestone, coal, coke, and some minor articles; of these practically all the ore and limestone come by water. Outbound shipments are of pig iron, ingot steel, billets, wire, wire rods, wire nails, barbed wire, and staples. The New York Central, Lehigh

Valley, and Delaware, Lackawanna & Western have a joint spur, known as the Womalancet branch, which extends from Black Rock to Tonawanda; and through this branch the Wickwire company has direct connection with these three roads. Traffic is also interchanged with the Erie through intermediate switching. The point of interchange is known as the Harriet yard, about 200 feet beyond the property line of the plant, and the Womalancet branch has rails connecting this yard with the rails of the industry inside the property line. Between the Harriet yard and points of placement within the plant, cars are switched by industry power. For interchange switching performed by it, the Wickwire company receives an allowance of 71 cents per loaded car and 35.5 cents for certain cars containing part lots. These allowances were first received May 15, 1916, and are paid only on cars for which the trunk lines have a road haul. As in the case of the Buffalo Union Furnace Company, the Wickwire Steel Company was formerly served by an incorporated line owned by it, the North Buffalo Railroad, to which it leased its plant tracks. The latter has now ceased operations and its tracks and equipment have been taken over by the Wickwire company.

The Lackawanna Steel Company owns the South Buffalo, which serves it and the Rogers-Brown Company. Both of these industries are located at Buffalo, both manufacture pig iron and steel products, and both bring their ore in by water. Coal, coke, and limestone come in by rail. The trunk line connections of the South Buffalo are the Pennsylvania, the Delaware, Lackawanna & Western, the New York Central, the Lehigh Valley, the Buffalo, Rochester & Pittsburgh, and the Erie railroads. Through intermediate switching the South Buffalo interchanges traffic with other trunk lines having terminals at Buffalo. The average haul of the South Buffalo between trunk lines and points of placement at these industries is from 3.5 to 4 miles, and on all commodities to and from these industries the South Buffalo receives from the trunk lines 10 cents per ton, net or gross as rated. It appears that the service for which this payment is made includes the spotting of cars within the plant of the Lackawanna Steel Company. In practice, however, coal, coke, and limestone for the Lackawanna Steel Company are delivered by the South Buffalo on storage tracks within the plant from which they are moved to points of unloading by the steel company at its own expense and at the regular intervals required for its own convenience. Inbound materials other than ore, coke, coal, and limestone, and all outbound materials are spotted at points of loading or unloading within the plant by the South Buffalo.

At the plant of the Rogers-Brown Company all inbound and outbound cars are delivered by the South Buffalo or by the Pennsylvania on interchange tracks at or near the plant gate. To and from that point the cars are switched by the power of the industry without compensation.

It does not appear that trunk lines serving blast furnaces have ever made it their practice to spot ore, coke, or limestone at the times and in the proportions necessary to meet the requirements of furnace operations. Delivery of these commodities on storage tracks, or at other convenient points within or adjacent to the plant is apparently satisfactory to the industries. Switching cars from such points of delivery to the furnace is a service which the industries generally prefer to perform with their own power and at their own convenience. In our report in the *Industrial Railways Case*, 29 I. C. C., 212, we said at p. 224:

The successful operation of a blast furnace requires a continuous movement of ore, coke and limestone, to be ready at the precise time and in the proper proportion to meet the requirements of the furnaces. The absolute necessity of this regularity of service at the furnace is repeatedly referred to on the record. * * * In many cases the tracks on which these deliveries of coke, ore and limestone into the furnace bins are made are elevated on trestles adjoining the furnaces.

In this proceeding the principal witness for complainant testified that it is necessary at all times to keep the blast furnaces fully supplied with ore, coke, and limestone; that car movements must be regular and made to meet the requirements of the furnaces rather than those of transportation; and that, owing to the limited capacity of the trestle tracks at the furnace bins, three or four spottings a day are necessary.

In the case of the Lackawanna Steel Company the absorptions paid by defendant carriers to the South Buffalo cover the spotting of all cars except coal, coke, and limestone. As said above, cars of coal, coke, and limestone are placed on storage tracks designated by the steel company, and from there are moved by or at the expense of the steel company at its own convenience.

This record makes plain that the delivery of materials at its blast furnaces by the trunk lines is not in fact desired by complainant; that all that here may reasonably be required of the trunk lines is the placement of cars on storage tracks, or at other convenient points within or adjacent to the plant; and that movement from such point of placement to the furnaces or other points of consumption is a plant service which, in the absence of discrimination, the trunk lines are under no obligation to perform.

Counsel for defendants dwell upon the limitations of the obligations of carriers in the delivery and receipt of freight to and from industries. They urge that defendants have performed their full duty to complainant at both of its plants during the entire period covered by the complaint, in that they delivered and received cars at the interchange points selected by complainant itself. We must determine whether defendants have subjected complainant to undue prejudice and disadvantage by making allowances for spotting service performed by or for certain of complainant's competitors at Buffalo and refusing to make an allowance to complainant for performing the same service under substantially similar circumstances and conditions. In the *Westport Stone Co. and Big Four Stone Co. Case*, 38 I. C. C., 316, we said:

As a general proposition, it may be said that a common-carrier railroad is under no obligation to haul cars at its own cost beyond its own rails. This statement, however, is subject to qualification. When a carrier adds to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at one industry, while treating a like service at other similarly circumstanced industries as covered by the line-haul rate, it creates an unjust discrimination.

It is reasonably clear that the circumstances and conditions surrounding the receipt and delivery of freight at the various iron and steel mills in the Buffalo rate district are not sufficiently different to justify or explain the different practices of the carriers. The discriminatory treatment to which complainant has been subjected is plainly condemned by the act.

Upon the record before us we find no violation of section 1 of the act, but we are of opinion and find that the practice of the defendants to spot cars or to make an allowance for spotting cars for or at the plants of the Lackawanna Steel Company, the Buffalo Union Furnace Company, and the Wickwire Steel Company, complainant's competitors in the Buffalo rate district, while refusing to spot cars or to make an allowance therefor at the plants of complainant in said district, has been, is, and for the future will be, unduly prejudicial to complainant in violation of section 3 of the act.

The burden of proof to establish the fact and amount of damage due to unjust discrimination or undue prejudice as the proximate cause is upon the complainant. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184. The only damage alleged by complainant is loss of profits. The record shows that during the early part of 1917 the prices of all commodities sold by complainant and its competitors were abnormally high; that the government fixed maximum prices for pig iron and most articles of steel on business booked after September 24, 1917, which, however, did not eliminate all competi-

tion; and that there was a large demand for all pig iron, the principal commodity sold, that could be produced. The evidence shows that complainant's competitors in the Buffalo district were not able to and did not control the buying or selling markets. On the contrary, complainant's witnesses testified that in fixing selling prices complainant considered all overhead expenses, including the interchange service at its plant; that it sometimes made the market and probably undersold its competitors; and that one of its competitors at times had to scale its prices in order to meet those of complainant.

We are of opinion and find that the complainant has not shown that its profits would have been any greater had the existing discrimination and prejudice been removed, or that it has suffered any damage of which such discrimination and prejudice are the proximate cause.

By appropriate order the defendant carriers will be required to remove the undue prejudice here found to exist.

57 I. C. C.

No. 11017.¹

WHITEHOUSE BARREL COMPANY

v.

DIRECTOR GENERAL, YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY, ET AL.

Submitted March 8, 1920. Decided June 7, 1920.

Rates applicable on slack barrel gum staves, in carloads, from Greenwood, Miss., to Hastings, Fla., found not unreasonable or otherwise unlawful. Refund of overcharge on one shipment directed. Complaint dismissed.

W. C. Whitthorne for complainant.

William Burger for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed by the parties to the report proposed by the examiner, which is here followed.

Complainants in both cases are Helen Whitehouse and W. W. Dyer, copartners engaged in the cooperage business at Columbia, Tenn. By complaints seasonably filed they allege that the charges collected on five carloads of slack barrel gum staves shipped from Greenwood, Miss., to Hastings, Fla., between March 31 and April 28, 1917, were unreasonable and unduly prejudicial to the extent that the charges for the movement to Jacksonville, Fla., exceeded those based on a rate of 21 cents subsequently established. Reparation only is asked. Rates are stated in cents per 100 pounds unless otherwise indicated.

Greenwood is a junction point of the Yazoo & Mississippi Valley Railroad and the Southern Railway in Mississippi, 20 and 55 miles east of Moorhead and Greenville, Miss., respectively. Hastings is a local station on the Florida East Coast Railway, 54 miles south of Jacksonville. Two shipments, aggregating 89,900 pounds, moved: Southern Railway in Mississippi to Columbus, Miss.; thence via either Southern Railway direct, or Southern and Georgia Southern & Florida, to Jacksonville; and Florida East Coast beyond, about

¹ This report also embraces No. 11017 (Sub-No. 1). Same v. Director General, Southern Railway Company in Mississippi, et al.

806 miles. Charges of \$269.53 were collected on these shipments at the applicable combination rate made up of 16 cents to Atlanta, Ga., 9.4 cents thence to Jacksonville, and \$11 per car of 24,000 pounds, excess in proportion, or 4.58 cents per 100 pounds, beyond. This combination rate was the equivalent of 29.98 cents. The minimum weights in connection with these rates are not assailed. The three other shipments weighed 63,100, 46,400, and 17,740 pounds, respectively, and moved: Yazoo & Mississippi Valley to Jackson, Miss.; Alabama & Vicksburg to Meridian, Miss.; Alabama Great Southern to York, Ala.; Southern to Selma, Ala.; Louisville & Nashville to River Junction, Fla.; Seaboard Air Line to Jacksonville; and Florida East Coast beyond, 877 miles. The combination rate applicable to these shipments, equivalent to 30.83 cents, was made up of 7.25 cents, minimum 36,000 pounds, to Jackson, 19 cents, minimum 30,000 pounds, thence to Jacksonville, and \$11 per car of 24,000 pounds, excess in proportion, or 4.58 cents, beyond. Charges of \$526.09 were collected, including an overcharge of \$94.35 on one of the shipments. This overcharge should be promptly refunded.

At the time of movement a rate of 21 cents to Jacksonville applied from Greenville, Miss., a point on the Southern Railway in Mississippi to which Greenwood is directly intermediate via the Southern route. This departure from the long-and-short-haul provision of the fourth section was protected by an appropriate application. Complainants show that a rate of 21 cents was contemporaneously applicable on staves, in carloads, to Jacksonville from Vicksburg, Miss., and Memphis, Tenn., and that on March 15, 1918, it was established from Greenwood to Jacksonville.

Defendants contend that the rates from Greenville and other Mississippi River points, such as Vicksburg and Memphis, to southeastern ports, such as Jacksonville, are subnormal; that Greenwood is an interior point from which the Mississippi River basis should not have been established; that the publication of the Greenville rate from Greenwood on March 15, 1918, was a temporary measure and a matter of expediency; and that a voluntary reduction in rates does not establish the unreasonableness of previously existing rates. They state that all these rates will be revised as soon as a general readjustment of rates on staves in the southeast can be accomplished in compliance with Fourth Section Order No. 3866. Defendants cite rates on staves, in carloads, from and to points in the southeast, ranging from 30.85 cents to 36.21 cents for distances ranging from 667 miles to 837 miles.

We find that the rates legally applicable were not unreasonable or otherwise unlawful.

The complaint will be dismissed.

No. 11069.

F. W. FROST & COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, GREAT NORTHERN
RAILWAY COMPANY, ET AL.

Submitted April 23, 1920. Decided June 7, 1920.

Import rate on soya-bean oil in carloads from Seattle, Wash., to Babbitt, N. J., found not to have been unreasonable or unduly prejudicial. Shipments found to have been overcharged and reparation awarded.

Austin J. Jones for complainant.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

No exceptions were filed by the parties to the report proposed by the examiner, which is followed in this report.

Complainant is a corporation engaged in the import and export business at New York, N. Y. By complaint filed December 9, 1919, it alleges that the rate of \$2.375 charged by defendants for the transportation from Seattle, Wash., to Babbitt, N. J., on July 17, 1918, of 600 cases of "hardened oil" imported from Japan, was illegal to the extent that it exceeded \$1.125, and that the latter rate was unreasonable and unduly prejudicial to the extent that it exceeded a subsequently established import rate of 90 cents. Reparation only is asked. Rates are stated in amounts per 100 pounds.

The shipments consisted of two carloads of solidified or congealed soya-bean oil weighing 134,400 pounds, imported from Japan and moved from Seattle to Babbitt over defendant carriers' lines. The value of the oil solidified is about the same as in the liquid state. Charges were collected at the domestic fifth-class rate of \$2.375.

When the oil was shipped from Japan there were in effect from Seattle to Babbitt import commodity rates on soya-bean oil and soya-bean oil stock residuum of 65 cents, in tank cars, minimum full shell capacity of tank, and 60 cents, in packages, minimum 40,000 pounds. On June 25, 1918, these and other import rates were can-

the manufacture of linoleum and oilcloth. Like linoleum, congo-leum is generally used as a floor covering and is sold in competition with linoleum. Both load to approximately the same weight, and both were and are rated third class, in carloads, minimum 30,000 pounds, in western classification.

The shipments moved over defendants' lines and charges were collected at the applicable joint third-class rate, which in December, 1917, and until June 25, 1918, was \$1.29, and thereafter \$1.615, under General Order No. 28 of the Director General of Railroads. The latter rate is still in effect. A carload commodity rate of 85 cents, minimum 45,000 pounds, increased to \$1.065 on June 25, 1918, under General Order No. 28, was contemporaneously maintained by defendants on oilcloth and lineoleum from Marcus Hook to Oklahoma City.

Linoleum and congo-leum take the same commodity rates from Marcus Hook to points in Washington, Oregon, California, Texas, and to Colorado and Utah common points; also from New York, N. Y., to points in Texas, and from Chicago, Ill., to points in various states. The movement of congo-leum from Marcus Hook to points in Oklahoma is of comparatively recent origin and the shipments here considered are apparently the only ones made by complainant to that territory prior to the filing of this complaint. The movement of linoleum from Marcus Hook to the same territory is not shown. No direct testimony was offered on behalf of defendants.

A question similar to that here before us was presented in *Volker & Co. v. Director General*, 55 I. C. C., 163. We there found that the rates on congo-leum in straight carloads, or in mixed carloads with oilcloth, linoleum, wood-grain flooring, and cork carpet, from points in Atlantic seaboard territory to western points were, and for the future would be, unreasonable to the extent that they exceeded or might exceed the rates contemporaneously maintained from and to the same points on the commodities named in straight or mixed carloads. We awarded reparation on four shipments of congo-leum from Marcus Hook and Philadelphia, Pa., to Denver, Colo., to the basis of the through commodity rate on linoleum and the other commodities named between the same points at the time of movement, charges having been assessed on the basis of a higher combination rate made up of the class rates to and from the Mississippi River.

Following the case cited and upon this record we find that the rate applicable on congo-leum in carloads from Marcus Hook to Oklahoma City prior to June 25, 1918, was unreasonable to the extent that it exceeded 85 cents per 100 pounds, minimum carload

weight 45,000 pounds, and that the rate applicable on the same commodity between the same points on and after June 25, 1918, was, is, and for the future will be, unreasonable to the extent of its excess over \$1.065, minimum carload weight 45,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record and complainant should comply with rule V of the Rules of Practice. We are without authority to order refund of war taxes.

An appropriate order will be entered.

57 I. C. C.

IN RE ASSIGNMENT OF FREIGHT CARS.

June 11, 1920.

By Senate Resolution No. 376 the Interstate Commerce Commission was directed to inform the Senate upon what authority, if any, its order of April 15, 1920, entitled "Notice to carriers and shippers" was issued.

Prior to 1907 it was a common practice for the railroads to deliver to coal mines cars privately owned or leased, foreign railway fuel cars and cars for the carrier's own fuel loading, accordingly as the cars were consigned or assigned and as the railroad had contracts for purchase of fuel coal, and to refrain from counting or charging such cars against the distributive shares of the mines to which they were given. In other words, all such cars were given to the mines for which they were intended and such mines were given in addition their full share of the other cars available for distribution. This practice was complained of as unreasonable and unduly prejudicial and in *R. R. Com. of Ohio et al. v. H. V. Ry. Co.*, 12 I. C. C., 398, decided July 11, 1907, the Commission held that privately owned or leased cars, and foreign railway fuel cars sent on to the line by other railway companies for loading with fuel coal for the use of such other railway companies, should be given to the mines to which they were consigned or assigned but must be counted against the distributive shares of the mines, and that if such specially consigned or assigned cars equalled or exceeded the distributive share of a mine receiving them it should have no additional cars, and if the specially consigned or assigned cars did not equal the distributive share of the mine to which given it should be given additional cars only sufficient to make up its distributive share.

In the report in this case it was pointed out that in *U. S. ex rel Pitcairn Coal Co. v. B. & O. R. R. Co.*, 165 Fed., 113, a similar decision was made as to private cars and a contrary decision as to foreign railway fuel cars, but that in *Logan Coal Co. v. Penna. R. R. Co.*, 154 Fed. 497, it was held that such foreign railway fuel cars should be counted against the mines to which they were consigned.

Among other considerations mentioned in the Commission's report was the fact that a railroad company would not send its cars on to the lines of another railway company even for its own fuel supply if they were to be diverted from that intended use and distributed among others than those to whom they were consigned for loading to various destinations on the lines of other carriers, thus rendering the fuel supply of the carrier sending the cars uncertain and depriving it of the use of its equipment.

In *Traer v. Chicago & Alton R. R. Co.*, 13 I. C. C., 451, decided April 13, 1908, the same questions were presented that had been presented in *R. R. Com. of Ohio v. H. V. Ry. Co.*, *supra*, and the additional question of the reasonableness of the carrier's failing to count against the mines to which they were delivered cars for loading with its own railroad fuel. The Commission followed the decision in *R. R. Com. of Ohio v. H. V. Ry. Co.*, *supra*, and in addition held that the cars used by carriers on their own lines for transportation of their own fuel supply may be given to the mine or mines from which such fuel supply is received, but that if such mine or mines also ship commercial coal fuel cars so supplied must be counted against the mine or mines under the rule laid down in *R. R. Com. of Ohio v. H. V. Ry. Co.*, *supra*.

In this case it was said that if a contract for fuel covers such supply as the carrier reasonably needs for its current operation and a period of car shortage should come it could use its equipment to procure its fuel even though it thereby deprived shippers of desired use thereof; that this right to so use its cars did not rest upon the ground of private contract but upon the public necessity that the railroad must have fuel; but that neither contract nor considerations of public policy which recognized the public necessity for fuel would justify the carrier during a period of car shortage in using its equipment for a superfluous supply of its own fuel when such equipment was demanded and needed by the shippers and the public. Recognizing the right of the carrier to secure its fuel supply either from mines which it owns or those the entire output of which it purchases, it was held that where the carrier purchases a portion of the output of a mine which is also producing commercial coal it may not discriminate in favor of such mine by failing to count against it in the distribution of cars those cars which it furnishes to that mine for its own fuel.

In *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C., 86, decided June 2, 1908, the rule laid down in *R. R. Com. of Ohio v. H. V. Ry. Co.*, *supra*, was again followed, and it was said that the ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; that the ownership of

a private car or the possession of a foreign railway fuel car gives to a coal operator no preferred right to have it occupy a carrier's sidings or tracks as against a system car loaded by another operator, or to have it handled in trains in preference to a system car, and that when any of these general facilities are insufficient to move all the traffic offered no operator has a superior right over another merely because he enjoys the advantage of owning private cars or has fuel contracts with connecting lines.

In *Interstate Com. Com. v. Ill. Cent. R. R. Co.*, 215 U. S., 452, decided January 10, 1910, the Supreme Court of the United States sustained the decision of the Commission in *R. R. Com. of Ohio et al. v. H. V. Ry. Co.*, *supra*, and in *Traer v. Chicago & Alton R. R. Co.*, *supra*, and held that the act to regulate commerce delegated to the Commission authority to determine on complaint the question of distribution of coal cars, including the carrier's own fuel cars, in times of car shortage as a means of prohibiting undue preferences and unjust discriminations.

In *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C., 356, decided March 7, 1910, the above decision of the Supreme Court was referred to in pointing out that the orders of the Commission with respect to the distribution of coal cars by interstate carriers remained unaffected by attacks that had been made upon them in the courts, and that further consideration of these questions in connection with this group of cases had confirmed the conviction that the general principles underlying the disposition made of previous cases were both sound and just. The rule applied by the carrier in the *Hillsdale Case* was described, its effect was explained, and it was condemned as giving undue advantage in distribution to certain mines and as contrary to the previous decisions of the Commission. In a supplemental report in this case, 23 I. C. C., 186, reparation was awarded for damages resulting from the discrimination which had been practiced and found.

In *Penna. R. R. Co. v. Clark Coal Co.*, 238 U. S., 456, decided June 21, 1915, the Commission's award of reparation in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, *supra*, was sustained by the Supreme Court notwithstanding the fact that an action had been brought in a state court on the same subject before the Commission had made its award of reparation. The Supreme Court held that where a complaint involved practices of carriers in distributing cars for interstate shipments no action is maintainable in any court for damages alleged to have been inflicted thereby until the Commission has made a finding as to the reasonableness of such practices.

In the Commission's report of June 9, 1914, to the Senate and House of Representatives in *Coal and Oil Investigation*, 31 I. C. C., 193, it said at page 218:

As to actual distribution of cars in accordance with the relative ratings of the mines, the opinion of the Commission is clearly set forth in *Traer v. C. & A. R. R. Co.*, 13 I. C. C., 454, and it was sustained by the Supreme Court of the United States in 215 U. S., 452 and 479. Formerly, few of the roads counted against the mine ratings company fuel cars (i. e., cars to be loaded with the carrier's own fuel); private cars (i. e., cars owned or leased by coal companies); or foreign consigned cars (i. e., cars delivered by foreign roads for loading at particular mines). In the case just cited, the Commission ruled that all three classes of cars should be counted against the ratings as well as those furnished for commercial loading. In cases where the carrier takes the entire output of a mine, however, it has been considered permissible to deduct the number of cars delivered to that mine from the available supply before prorating among mines shipping commercial coal, or both commercial and railroad coal.

The rule of law on this subject thus established remained the controlling rule for carriers generally, and apparently without friction or controversy, until during the war and under the rules of the Fuel Administration, including its zoning system, and while the roads were under federal control, the rule was changed and the use of assigned cars for loading with railroad fuel was abandoned. This change was followed by the imperative necessity of railroads resorting to confiscation of coal in transit in order to keep their roads in operation. In many instances the coal was confiscated at the mouth of the mine. Those familiar with these subjects are apparently unanimous in saying that the practice of confiscation is attended by more evils than is the practice of assigned cars for railway fuel.

When federal control terminated there was in effect on all roads under federal control a set of rules that had been formulated by the Railroad Administration after consultation with a committee of the National Coal Association, and in order that there might not be confusion because of different lines of action being followed by different individual roads the Commission on March 2, 1920, issued a notice to carriers and shippers recommending that until experience and study demonstrated that other rules would be more effective and beneficial the uniform rules as contained in the Railroad Administration's Car Service Section Circular CS-31 (Revised) be continued in effect.

With the suspension of the activities of the Fuel Administrator and regulations which he had prescribed some railroads that did not have more than two or three days' supply of coal and that were and for some time had been securing their necessary fuel supply by confiscation at the mouth of the mines were sued for damages on account of such confiscation, injunctions were sought in state courts against

the practice of confiscation, and when it was learned that the carriers were contemplating return to the use of assigned cars injunctions were sought in state courts against the same carriers restraining them from using assigned cars. Numerous informal conferences were had between the Commission and representatives of the coal operators and representatives of the railroads in an effort to find some way by which the carrier could be assured of a fuel supply without the use of assigned cars or resort to confiscation. A conference was arranged between a committee representing the railroads and a committee representing the National Coal Association for the purpose of devising, if possible, some plan that would effect that purpose but no concrete or definite suggestion to that end resulted. Transportation conditions in the country were serious. Railroads that were unable to meet the demands upon them for transportation would be wholly unable to function if they could not secure coal and many of them had not more than two or three days' supply.

Rule 8 of the Railroad Administration's rules which the Commission had recommended be adhered to until experience and study demonstrated that some other rules would be more effective and beneficial was as follows:

8. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

It will be noted that under this rule private cars, some of which are owned and used by coal operators, and cars assigned to the mines by the Car Service Section of the Railroad Administration for railroad fuel or for other purposes were designated and treated as "assigned" cars. All other cars were designated and treated as "unassigned" cars.

Rules 9 and 10 of the Railroad Administration's rules were as follows:

9. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply prorated to the other mines, based on a revised percentage by reason of such elimination.

10. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

It will be noted that under these rules the "assigned" cars were treated in the same manner as railway fuel cars were treated under the Commission's decisions in the cases hereinbefore cited.

Under the conditions that have been briefly outlined the Commission on April 15, 1920, changed its recommendation of March 2, 1920,

and recommended that until further experience and study demonstrated that other rules will be more effective and beneficial the Railroad Administration's rules be continued in effect except that rule 8 should be amended to read:

8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in *R. R. Com. of Ohio et al v. H. V. Ry. Co.*, 12 I. C. C., 398, and *Traer v. Chicago & Alton Railroad Co. et al.*, 13 I. C. C., 451, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

The Commission also expressed the opinion that an emergency existed requiring immediate action and in the exercise of the authority conferred by paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, it suspended the operation of the then existing rule 8 and directed the observance of rule 8 modified as above, effective April 16, 1920, and until further direction or order of the Commission.

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, declares it to be the duty of every carrier by railroad to make just and reasonable distribution of cars for the transportation of coal among the coal mines served by it whether located on its line or lines or customarily dependent upon it for car supply, and to maintain and apply just and reasonable ratings of such mines during any period when the supply of cars available for such service does not equal the requirements of the mines, and to count each and every car furnished to or used by any such mine for transportation of coal against the mine, and provides a specific penalty for failure or refusal to comply with these requirements.

Paragraph (5) of section 1 of the interstate commerce act, as amended by section 400 of the transportation act, 1920, provides that charges made for any service rendered or to be rendered by carriers subject to the act shall be just and reasonable. The act does not attempt to define in detail what is a just and reasonable rate, fare or charge, or what is a just and reasonable distribution of cars or rating of mines. The Commission is authorized to determine what is a just and reasonable charge for transportation or what are just and reasonable rules for distribution of cars or rating of mines.

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission whenever it is of opinion that shortage of equipment, congestion of traffic or other emergency requiring immediate action exists in any section of the country, to suspend the operation of any or all rules, regulations or practices then established with respect to car service for such time as may be determined by the Commission, and to make such just and reasonable directions with

respect to car service as in its opinion will best promote the service in the interest of the public and the commerce of the people. The Commission's direction of April 15, 1920, was issued under authority of that paragraph.

The Commission is of opinion that paragraph (12) of section 1 of the interstate commerce act does not change the rule of law laid down in the *Hocking Valley* and *Traer Cases*, *supra*. The paragraph states in statutory form that which had theretofore been the law pursuant to the decisions of the Commission and of the Supreme Court of the United States.

No other definite rule or practical plan has been suggested by the interested parties in the many conferences that have been had on this subject. No rule other than that laid down by the Commission and sustained by the Supreme Court had been presented or tried after the decision of the Supreme Court, hereinbefore cited, until, as stated, the rule was changed under war conditions when the railroads were under federal control and the production, distribution and marketing of coal was under a war time federal administration. The passing of the roads from federal control and the suspension of the operation of the Fuel Administration's rules, together with the transportation conditions and shortage of fuel on hand, created an emergency in which the Commission acted in accordance with its best judgment. Both before and since that action was taken parties interested in or affected thereby have been freely invited to suggest some workable concrete plan under which the railroads can get a dependable supply of the quality of fuel adapted to their uses which can fairly be substituted for the rule to which some objections have been made. No one has suggested such a substitute rule. The nearest approach to it has been an expressed belief that a form of preferential contract could be devised under which the contracting railroad would have first call upon the output of a mine but so far as we are advised no such form of contract has been framed. It seems not inappropriate to say that the coal operators are not able to entirely agree among themselves as to the advantages or disadvantages of the assigned car practice.

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission to direct priorities in transportation. If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to that for railway fuel, as was done when priorities were issued by the President's priority agent during the war.

Copies of United States Railroad Administration's Car Service Section Circular CS-31 (Revised) and of the Commission's direction of April 15, 1920, are appended hereto and made a part hereof.

APPENDIXES.

APPENDIX I.

UNITED STATES RAILROAD ADMINISTRATION.

Director General of Railroads.

DIVISION OF OPERATION.

Car Service Section.

CIRCULAR CS-31 (REVISED).

WASHINGTON, December 23, 1919.

TO RAILROADS:

The following rules are promulgated to govern uniformly the rating of coal mines (other than anthracite) and car distribution to such mines. They will supersede the rules contained in Car Service Section Circular CS-31, and are to be made effective on all railroads loading coal (other than anthracite) in season to permit car distribution to be made in accordance therewith, beginning January 10, 1920.

RULES FOR RATING FOR CAR DISTRIBUTION PURPOSES COAL MINES (OTHER THAN ANTHRACITE) LOADING COAL AT MINE TIPPLES.

The following rules shall govern the rating of coal mines (other than anthracite) as the basis for the distribution of empty cars to such mines:

(a) The daily capacity of each mine (other than mines covered by paragraphs b and c) shall be determined by taking the total coal tonnage shipped by the mine during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(b) The daily capacity of a mine which is served jointly by or for two or more carriers (steam, electric, or water) shall be determined by taking the total tonnage shipped by the mine via all such carriers during the preceding month, dividing it by the number of hours worked in producing it (see paragraph e), and multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "gross daily rating" of such mine and shall be the basis on which cars shall be distributed to it; provided, that if track or other limiting conditions further restrict its ability to ship via (note a)----- railroad, such conditions shall be the limiting factor for the (note a)----- railroad's daily rating of such mine.

(c) The daily capacity of a mine delivering part of its output to a cooking plant, to locomotives at the tippie, or to local trade shall be determined by taking the total coal tonnage shipped in railroad cars during the preceding month, dividing it by the number of hours worked (see paragraph e), and

multiplying the quotient by the number of hours in the recognized workday (not more than 10 hours) of the individual mine. The result shall be termed the "daily rating" of such mine and shall be the basis on which cars shall be distributed to it.

(d) When the fires are withdrawn from part (or all) of the ovens at an operation coking part of its output, for the purpose of shipping coal production formerly used in charging ovens, the daily rating of the mine shall be increased to include the average tonnage per day so diverted in the previous month until the beginning of the next rating period, at which time the daily rating of the mine shall be determined in accordance with paragraph *a* or *c*, due allowance being made for such average tonnage so diverted in computing the new daily rating. A corresponding decrease of the mine's rating will be made when the ovens are again placed in blast.

When a mine that has been coking its entire output desires to ship coal and the fires are withdrawn from part (or all) of its ovens, it shall be given a daily rating for coal shipments corresponding to the average tonnage of coal formerly coked until the beginning of the next rating period, at which time the daily rating of the mines shall be determined in accordance with paragraph *a* or *c*.

(e) In determining the number of hours worked in each day at a mine, time will be counted from the established time for beginning work (or the actual time if earlier or later than the established time) on the tippie until the dumping of coal finally ceases for the day, making deductions for the noon intermission when it is taken and for the time lost by reason of being blocked with loads, waiting for additional empty cars, or other railroad disability; provided, that if a greater number of hours is worked in the mine than on the tippie, the mine hours must be reported also, and the number of hours worked in the mine must then be used as the number of hours worked in producing the coal. (See paragraphs *a*, *b*, and *c*.) Time may be deducted for railroad disability only when such railroad disability actually reduces the quantity of coal dumped that day. Time may be deducted when tippie is used for dumping coal into locomotives only when the tippie can not be simultaneously operated for loading cars.

(f) Daily ratings determined in accordance herewith will be revised monthly and made effective on the 10th of the month following the month's performance on which the rating is determined.

(g) If a mine be idle for a period of one full calendar month or more, the last rating determined will be the rating when work is resumed, provided the mine conditions be substantially the same as when the mine closed.

(h) Rating for development purposes based on current performance will be assigned to a new operation in previously undeveloped coal. A new mine will be furnished with a supply of cars sufficient to enable it to work freely in the course of development for a period not exceeding 6 months after shipments are begun; provided, that if theretofore its ability to load 150 tons per shift (not, however, to exceed 2 shifts per day) is established, it shall then be rated. A new operation of any other character shall be entitled to a development rating for a period of one month after shipments are begun.

(4) Each mine shall report on a prescribed form to the ----- (note b) ----- promptly at the close of each day:

1. The number of hours in the recognized workday;
2. The established time for beginning the day's work;
3. Actual time work was begun this day on the tippie;
4. If the noon hour intermission is taken, how long;

5. Time lost during the day account:

Waiting for railroad cars or other railroad disability.....hours;
 Strikes or mine labor shortage.....hours;
 Mine disability.....hours;
 No market.....hours;
 All other causes.....hours;

6. Time work on tippie ceased for day;

7. Number of hours worked to-day on the tippie,; and in the mine,
 (See paragraph e);

8. Number of net tons of coal loaded for shipment via (note a)
 railroad;

9. Total number of net tons of coal produced and shipped via each other
 outlet.

Joint mines shall furnish this daily report to each carrier serving them.

If after notice from the railroad an operator persistently fails to furnish
 this daily report, he will be penalized by curtailment of his car supply to the
 amount of 25 per cent of distribution for one week.

(j) At the close of each month the mine manager or superintendent in charge
 of actual operation shall report under oath on a prescribed form to the
 (note b) having jurisdiction, separately for each mine for each month,
 as follows:

1. Number of hours in the recognized workday;
2. Total number of net tons of coal produced;
3. Total number of net tons of coal shipped via the (note a)
 railroad;
4. Total number of net tons of coal shipped via each other outlet;
5. Total number of hours worked during the month. (See paragraph e.)

This report must be forwarded not later than the 3d of the month following
 that for which the statement is furnished; provided, that where the location of
 the mine makes it inconvenient to furnish a report under oath by that date, a
 report not under oath may be forwarded, and the sworn report forwarded not
 later than one week after. Joint mines shall furnish this monthly report to
 each carrier serving them.

(k) If an operator declines or persistently fails to make reports or to make
 accurate reports to the carrier as required herein, it will be assumed that the
 mine worked full hours in producing and loading into railroads cars the tonnage
 shipped, and the daily rating will be computed accordingly.

(l) A statement showing the mine ratings which will govern the car distribu-
 tion for the succeeding month will be furnished as soon as such ratings are
 ascertained to such coal mines on this railroad as make application for the
 same. Such statement will show the mine rating of each mine and the total
 mine ratings of each coal loading district and the aggregate ratings for all
 mines and all districts on this railroad, and the percentage of each such figure
 to the total.

NOTE a.—Designate the name of issuing railroad.

NOTE b.—Designate title of proper officer of issuing railroad.

RULES GOVERNING THE DISTRIBUTION OF CARS TO COAL MINE TIPPLES (OTHER
 THAN ANTHRACITE).

Whenever the available car supply in any region (or district) is such that
 all orders for cars can be filled, cars shall be placed at each mine in accordance
 with its daily order, except that whenever a mine holds unbilled coal loads, it
 shall be entitled only to empty cars equal in number to the difference between

the rating last established for the mine and the number of unbilled coal loads so held. Whenever the available car supply is such that all orders for cars can not be filled, each mine shall be given its pro rata share of cars in accordance with the following rules:

1. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

2. Grouping of mines, or pooling of cars as between mines, will not be permitted.

3. On application of mine operators and in the discretion of the railroad, cars may be placed on such days only and at such mines only as may elect to work, and overs and shortages in car supply resulting from this distribution shall be adjusted on succeeding days.

4. Each mine operator shall report to the car distributor at _____ (note 1) _____ p. m. daily:

- (a) Number of unconsigned loads on hand at 7 a. m.
- (b) Number of empty and partly loaded cars on hand at 7 a. m.
- (c) Additional number of empty cars received during the day.
- (d) Aggregate number of empty cars received during the day.
- (e) Number of cars loaded during the day.
- (f) Number of empty cars standing over at close of day.
- (g) Number of empty cars standing over at close of day which were received prior to 7 a. m., _____ cars; and prior to 10 a. m., _____ cars.
- (h) Number of partly loaded cars under tipple at close of day.
- (i) Number of unconsigned loads on hand at close of day.
- (j) Additional number of empty cars required for loading following day.
- (k) Note 2.

Copies of orders for cars for a mine that is joint with any other carrier (steam, electric, or water) shall be filed with a designated representative of each such carrier. Such combined requisitions must not exceed the gross daily rating of the mine.

5. The recognized standard car for coal car distribution is 50 tons. Others are compared thereto by tenths of a car; i. e., 80,000 pounds capacity equals eight-tenths (.8) of a car; 140,000 pounds capacity one and four-tenths (1.4) cars, etc., and cars must be charged and car distribution records maintained accordingly.

6. (a) All cars placed at a mine during each period of 24 hours ending at 10 o'clock a. m. (or when Sundays or holidays intervene, the longer period ending at 10 o'clock a. m. of the day immediately succeeding the Sunday or holiday) shall be charged against the mine on the day when such period ends; provided, that if the cars placed at 7 o'clock a. m. (not including partly loaded cars) do not equal or exceed in number 25 per cent of the daily rating (or order if less than the rating) then no cars will be charged against the mine that day except such as are loaded on that day.

(b) Cars placed between 10 o'clock a. m. and the time the mine ceases work for the day, if loaded or partly loaded on the day placed, will be charged against the mine on that day.

(c) All cars of other than railroad ownership (commonly called "private cars") placed for owners' loading will be considered as ordered.

7. The pro rata share of cars to which each mine is entitled, except as provided in rule 9, shall be based on its rating (or order when less than its rating). When a mine has empty or partly loaded cars which were placed prior to 7 a. m., or unconsigned loads standing over at the close of the day's business, such cars

shall be charged against it each service day thereafter while they are detained, except as otherwise provided in rule 6.

If on any day a mine be furnished with cars totaling less than 100 per cent of its rating (or order if less than its rating) and for any cause whatever other than railroad responsibility fails to load the entire number, the mine shall be considered as having been furnished 100 per cent of its requirements, and its order shall be arbitrarily reduced to the number of cars furnished.

8. Private cars and such cars as are assigned to mines by the Car Service Section, United States Railroad Administration, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

9. If the number of assigned cars placed at a mine during any period, as provided in rule 6, equals or exceeds the mine's pro rata share of the available car supply, it shall not be entitled to any unassigned cars. The assigned cars, together with the mine's requirements, will be eliminated, and the remainder of the available car supply pro rated to the other mines, based on a revised percentage by reason of such elimination.

10. If the number of assigned cars placed at a mine during any period, as provided in rule 6, is less than its pro rata share, based on a revised percentage, it shall be entitled to receive unassigned cars in addition thereto to make up its pro rata share.

11. If a mine receives more or less cars than it is entitled to during any period, as provided in rule 6 (and after eliminating assigned cars as provided in rule 9), it will be charged with a surplus or credited with a shortage accordingly, and the discrepancy adjusted as promptly as practicable.

12. A statement showing the car distribution for the preceding month will be furnished as soon as such distribution is ascertained, to such coal mines on this railroad as make application for the same. Such statement will show the car distribution of each mine, the total car distribution of each coal loading district, the aggregate distribution for all mines and all districts on this railroad, and the percentage of each such figure to the total.

NOTE 1. *Hour may be named by the issuing railroad.*

NOTE 2. *Issuing railroad may ask additional necessary information pertaining to car supply.*

W. C. KENDALL,
Manager Car Service Section.

Approved:
W. T. TYLER,
Director Division of Operation.

APPENDIX 2.

INTERSTATE COMMERCE COMMISSION, WASHINGTON.

April 15, 1920.

Notice to Carriers and Shippers:

The supply of cars available for the transportation of coal continues insufficient to meet the demand. In view of the cessation of government control of coal production and distribution, effective April 1, 1920, and in order that railroad fuel requirements may be reasonably met without the necessity of carriers resorting to confiscation of commercial coal, it becomes necessary to amend our notice to carriers and shippers dated March 2, 1920, and our recommendation therein to read as follows:

57 I. C. C.

The Commission recommends that until experience and careful study demonstrate that other rules will be more effective and beneficial, the uniform rules as contained in the Railroad Administration's Car Service Section Circular CS-31 (Revised) be continued in effect, except that rule 8 as contained in said circular should be amended to read:

8. Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in *R. R. Com. of Ohio et al. v. H. V. Ry. Co.*, 12 I. C. C., 398, and *Traer v. Chicago & Alton Railroad Co. et al.*, 13 I. C. C., 451, will be designated as "assigned" cars. All other cars will be designated as "unassigned" cars.

The Commission is of opinion that an emergency exists requiring immediate action, and in exercise of the authority conferred by paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, hereby suspends the operation of the existing rule 8 and directs the observance by all carriers by railroad subject to the interstate commerce act of rule 8 modified as above, effective April 16, 1920, and until the further direction or order of the Commission.

By the Commission.

GEORGE B. MCGINTY,
Secretary.
57 I. C. C.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

1023. *BUFFALO UNION FURNACE Co. ET AL. v. L. S. & M. S. RY. Co. ET AL.* Interchange switching service at Buffalo, N. Y. *A. E. Dustin, W. B. Stewart, Horace Andrews, and L. C. Wykoff* for complainants. *G. C. Green, F. J. Jerome, Clyde Brown, G. S. Patterson, W. J. Jenney, Evan Hollister, G. E. Brownell, Adelbert Moot, Kenefick, Cooke & Mitchell, Hoyt & Spratt, J. P. Orr, G. D. Dixon, Charles MacVeagh, I. W. Gantt, E. S. Ballard, H. A. Taylor, and S. H. West* for defendants. Complaint satisfied. Dismissed March 9, 1920.

8138. *AMERICAN ENAMELED BRICK & TILE Co. v. A. & R. R. Co. ET AL.* Rates on enameled brick from South River, N. J., to points in southeastern territory. *O. M. Rogers* for complainant. *R. W. Moore* for defendants. Dismissed for want of prosecution April 6, 1920.

9270. *ASTORIA BOX Co. ET AL. v. S., P. & S. RY. Co. ET AL.* Rates on forest products from Astoria and other Oregon points to points in Utah. *W. C. McCulloch* for complainants. *Blaine Hallock and C. A. Hart* for defendants. Complaint satisfied. Dismissed March 9, 1920.

9564 *RICE COAL Co. ET AL. v. N. Y., N. H. & H. R. R. Co. ET AL.* Switching charges on coal at Springfield, Mass. *H. F. Punderson and J. H. Fishback* for complainants. *L. H. Kentfield* for defendants. Transferred to special docket for adjustment May 12, 1920.

10013. *MEDINA FULLERS EARTH Co. v. A. & V. RY. ET AL.* Rates on fuller's earth, in carloads, from San Antonio and Macdona, Tex., to various destinations. *J. H. Burchmore, William O'Keefe, and M. J. McGowan* for complainant. *J. A. Ronan and Miss H. B. Nay* for intervenors. *J. B. Coffey, Gentry Waldo, C. J. Fagg, L. T. Wilcox, and J. W. Allen* for defendants. Dismissed on request of complainant May 11, 1920.

10056. *MORELAND MOTOR TRUCK Co. v. A., T. & S. F. RY. Co. ET AL.* Rates on motor truck axles and parts thereof, in carloads, from Detroit, Mich., to Los Angeles, Calif. *J. E. Helping* for complainant. *E. W. Camp, G. H. Baker, and G. D. Squires* for defendants. Complaint satisfied. Dismissed April 6, 1920.

10091. *MEMPHIS MERCHANTS EXCHANGE ET AL. v. A. & L. M. RY. Co. ET AL.* Rates on grain, grain products, mixed feed, and hay in carloads, from Memphis, Tenn., to points in Arkansas. *J. B. McGinnis and Charles Rippin* for complainants. *C. C. P. Rausch and G. F. Schnitzer* for defendants. Dismissed on request of complainants April 6, 1920.

10093. *MEMPHIS MERCHANTS EXCHANGE ET AL. v. A., T. & S. F. RY. Co. ET AL.* Rates on hay, grain, grain products, mixed feed, and articles taking the same rates, in carloads, from Memphis, Tenn., to points in Texas. *J. B. Edgar and S. E. Rison* for complainants. *J. M. Chaney, C. C. P. Rausch, and G. E. Schnitzer* for defendants. Dismissed on request of complainants April 6, 1920.

10349. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL ET AL.* Rates on carload shipments of imported nitrate of soda from Norfolk, Va., to Chicago, Ill., reshipped to Barksdale, Wis. *H. S. Farrow* for complainant. *T. W. Reath* for defendants. Transferred to special docket for adjustment May 24, 1920.

10394. ATLANTIC REFINING CO. *v.* DIRECTOR GENERAL ET AL. Rates on carload shipments of petroleum asphaltum, petroleum lubricating and refined oil, petroleum naphtha, and petroleum road oil shipped from Philadelphia, Pa., to points in Massachusetts and Rhode Island. *E. H. Porter* for complainant. *W. L. Kinter* for defendants. Transferred to special docket for adjustment March 22, 1920.

10677. DU PONT DE NEMOURS & CO. *v.* DIRECTOR GENERAL ET AL. Rates on carload shipments of zinc lined boxes from Wilmington, Del., to Carney's Point, N. J. *W. A. Simonton* for complainant. *R. V. Fletcher* for defendants. Transferred to special docket for adjustment Feb. 18, 1920.

10703. HOWELL & CO. *v.* DIRECTOR GENERAL ET AL. Rating on feed grinding mills shipped from Minneapolis and Minnesota Transfer, Minn., to points in Minnesota, North Dakota, South Dakota, Wisconsin, Nebraska, and Montana. *W. E. Finch* for complainant. *R. C. Fyfe* for defendants. Complaint satisfied. Dismissed March 9, 1920.

10715. UNDERWOOD VENEER CO. *v.* DIRECTOR GENERAL ET AL. Rates on lumber in carloads from Wausau, Wis., to Grand Rapids, Mich. *A. E. Solie* for complainant. No appearances for defendants. Complaint satisfied. Dismissed April 6, 1920.

10725. LOWRY LUMBER CO. *v.* DIRECTOR GENERAL ET AL. Reconsignment and demurrage charges on a carload of lumber at Little Rock, Ark. *G. H. Lowry* and *J. N. Svenson* for complainant. *A. P. Humburg*, *C. W. Crawford* and *M. W. Rotchford* for defendants. Complaint satisfied. Dismissed May 11, 1920.

10768. EMPIRE REFINERIES (INC.) *v.* DIRECTOR GENERAL ET AL. Rate on carload of gasoline from Cushing, Okla., to Gastonia, N. C., diverted to Syracuse, N. Y. *A. C. Holmes* for complainant. *J. H. Toomer* for defendants. Dismissed on request of complainant March 9, 1920.

10785. CENTRAL REFINING CO. *v.* DIRECTOR GENERAL ET AL. Rules and regulations governing the use of tank cars. *C. D. Chamberlain* for complainant. *F. E. Andrews*, *D. T. Lawrence*, *W. E. Prendergast* and *R. W. Fyfe* for defendants. Dismissed on request of complainant April 6, 1920.

10817. LOWRY LUMBER CO. *v.* DIRECTOR GENERAL ET AL. Charges on carload of lumber from Terry, La., to East St. Louis, Ill., reconsigned to Roodhouse, Ill., and later reconsigned to Neponset, Mass. *G. H. Lowry* for complainant. *J. M. Chaney* and *F. B. Clark* for defendants. Complainant satisfied. Dismissed March 9, 1920.

10849. ROCK CITY SPOKE CO. *v.* DIRECTOR GENERAL ET AL. Carload rates on oak and hickory spokes, in the white, from Nashville, Tenn., to Chicago and Moline, Ill., Racine and Milwaukee, Wis., South Bend and Evansville, Ind., Louisville, Ky., and points in c. f. a. and western trunk line territories. *T. M. Henderson* for complainant. *F. W. Gwathmey* for defendants. Dismissed on request of complainant March 9, 1920.

10859. BURTON-SWARTZ CYPRESS CO. OF FLORIDA *v.* DIRECTOR GENERAL ET AL. Alleges misrouting of one carload of lumber from Perry, Fla., to Oak Harbor, Ohio. *E. W. Owen* for complainant. *R. V. Fletcher* and *D. L. Younger* for defendants. Complaint satisfied. Dismissed April 6, 1920.

10869. BROWNELL IMPROVEMENT CO. *v.* DIRECTOR GENERAL ET AL. Rates on crushed stone from Thornton, Ill., to points within the Chicago switching district. *C. B. Cardy* for complainant. *J. H. Burchmore* and *N. D. Belnap* for intervenors. *K. L. Richmond* for defendants. Dismissed on request of complainant April 6, 1920.

10897. OLD BEN COAL CORPORATION *v.* DIRECTOR GENERAL ET AL. Rates on bituminous coal from mines at West Frankfort, Christopher and Sesser, Ill.,

to points in Missouri and Iowa. *Ralph Merriam* for complainant. *J. H. Burchmore* and *R. W. Ropiequet* for intervenors. *A. P. Humburg*, *K. F. Burgess*, *B. M. Hamilton*, *W. G. Wagner* and *R. B. Battey* for defendants. Complaint satisfied. Dismissed April 6, 1920.

10913. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Charges on carload of lumber from Graytown, Ark., to Mounds, Ill., diverted to Amherst, Nova Scotia. *G. H. Lowry* for complainant. *A. P. Humburg* for defendants. Dismissed on request of complainant March 9, 1920.

10914. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Charges on carload of lumber from Jackson, Miss., to Mounds, Ill., diverted to Baxter Springs, Kans. *G. H. Lowry* for complainant. *A. P. Humburg* for defendants. Dismissed on request of complainant March 9, 1920.

10934. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Rate on one carload of lumber from Ogema, Ark., to Jonesboro, Ark., reconsigned to Osceola, Iowa. *G. H. Lowry* for complainant. *A. J. Lehmann* for defendants. Dismissed on request of complainant March 9, 1920.

10940. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Rate on one carload of lumber from Jackson, Miss., to Clinton, Iowa. *G. H. Lowry* for complainant. *A. P. Humburg* for defendants. Dismissed on request of complainant March 9, 1920.

10964. *JOHNSON-BROWN Co. v. DIRECTOR GENERAL ET AL.* Rates on raw peanuts from points in Georgia, Alabama, and Florida to Norfolk, Suffolk, and Petersburg, Va., and Scotland Neck, N. C. No appearances for complainant. *R. A. P. Walker*, *W. C. Ermon*, *C. W. Bridger*, *S. Linthicum*, *S. R. Barnett*, and *H. Ignatius* for intervenors. *D. L. Younger* for defendants. Dismissed on request of complainant March 9, 1920.

11026. *PRAIRIE PIPE LINE Co. v. DIRECTOR GENERAL ET AL.* Rates on carload shipments of wrought iron pipe from Woodlawn, Pa., to Neodesha, Kans. *E. H. Hogueland* for complainant. *J. M. Chaney*, *W. F. Evans* and *F. C. Dumbeck* for defendants. Complaint satisfied. Dismissed April 6, 1920.

11029. *PRAIRIE PIPE LINE Co. v. DIRECTOR GENERAL ET AL.* Rate on carload of wrought iron pipe from Pittsburgh, Pa., to Locust Grove, Okla., diverted to Vanora, Kans. *E. H. Hogueland* for complainant. *J. M. Chaney* for defendants. Dismissed on request of complainant April 6, 1920.

11035. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Demurrage charges on carload of lumber at Dupo, Ill., by reason of embargo. *G. H. Lowry* for complainant. *J. M. Chaney* and *F. B. Clark* for defendants. Dismissed on request of complainant April 6, 1920.

11073. *LOWRY LUMBER Co. v. DIRECTOR GENERAL ET AL.* Demurrage charges on carload of lumber at Richford, Vt. *G. H. Lowry* for complainant. *J. M. Chaney* and *F. B. Clark* for defendants. Dismissed on request of complainant April 6, 1920.

11095. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL ET AL.* Rates on lumber from Hopewell, Va., to Carney's Point, N. J. *H. S. Farrow* for complainant. *Adams Dodson* and *H. W. Bickle* for defendants. Dismissed on request of complainant April 6, 1920.

11096. *ATLANTIC LUMBER Co. v. D. & H. Co. ET AL.* Rate on carload of lumber from McCullers, N. C., to Worcester, Mass., diverted to New Haven, Conn., through error of defendant. *R. D. Burbank* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant April 6, 1920.

11155. *SHAFFER OIL & REFINING Co. v. DIRECTOR GENERAL ET AL.* Carload rates on crude petroleum from Gahagan and Shaffers Spur, La., to Cushing, Okla. No appearances. Dismissed on request of complainant April 6, 1920.

11182. *LIEBERMAN IRON Co. v. DIRECTOR GENERAL ET AL.* Demurrage charges on one carload of scrap iron at Canton, Ohio. *H. C. Lust* for complainant. *H. S. Harr* and *R. V. Fletcher* for defendants. Dismissed on request of complainant April 6, 1920.

11202. *SEABOARD BY-PRODUCT COKE Co. v. DIRECTOR GENERAL.* Rates on coke from Kearney Junction, N. J., to Wharton, N. J., reconsigned to Netcong, N. J., and from Wharton, N. J., to Seaboard and Netcong, N. J. *J. R. Schurz* for complainant. *R. V. Fletcher* for defendant. Dismissed on request of complainant May 11, 1920.

11222. *COLUMBIAN ROPE Co. v. DIRECTOR GENERAL ET AL.* Rates on sisal, in carloads, from Chicago, Ill., and Indianapolis, Ind., to Auburn, N. Y. *E. B. Brockstedt* for complainant. *R. V. Fletcher* for defendants. Dismissed on request of complainant April 6, 1920.

11255. *PROCTER & GAMBLE Co. v. DIRECTOR GENERAL ET AL.* Rates on carload shipments of caustic soda from West Carrollton, Ohio, to Ivorydale, Ohio. *R. B. Phillips* for complainant. *C. P. Stewart* for defendants. Dismissed on request of complainant April 6, 1920.

11331. *VULCANITE PORTLAND CEMENT Co. v. DIRECTOR GENERAL ET AL.* Switching and car spotting services at Vulcanite, N. J. *G. W. Aubrey* for complainant. *H. W. Bicklé*, *A. H. Elder*, *W. J. Larrabee*, *W. L. Kinter*, *Clyde Brown*, and *J. F. Finerty* for defendants. Dismissed on request of complainant May 11, 1920.

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5060 (Sub-Nos. 1, 8, 25, 28, 32, 36, 38, and 45). *TAYLOR DRY GOODS Co. v. M. P. Ry. Co.*; and other cases numbered 5200 and 5200 (Sub-No. 1), *Wheeler & Motter Mercantile Co. v. A., T. & S. F. Ry. Co.*, and 5286 and 5286 (Sub-Nos. 1 to 3), *Smith & Co. v. C., B. & Q. R. R. Co.* March 9, 1920. Reparation for \$1,925.18, on shipments of cotton piece goods originating in New England and the south from points on the Mississippi River to points on the Missouri River, on account of unreasonable rates.

5504. *COTTON MFRS. ASSO. OF S. C. v. C., C. & O. Ry. of S. C.* March 9, 1920. Reparation for \$2,075.91, on shipments of bituminous coal from the Appalachia and Dante districts in Virginia to Spartanburg and other points in South Carolina, on account of unreasonable rates.

8620. *SOUTH TEXAS LUMBER Co. v. M. L. & T. R. R. & S. S. Co.* March 9, 1920. Reparation for \$65.66, on crossties shipped from LaFayette and Lockport, La., to Galveston, Tex., on account of damages due to misrouting.

9023 (Sub-No. 24). *HORST Co. v. A., T. & S. F. Ry. Co.*, and other cases sub-numbered 16, 25, 30, 42, 46, and 47. March 9, 1920. Reparation for \$5,069.82, on shipments of hops from certain points in California to points in the United States, on account of unreasonable charges.

9277. *E. I. DU PONT DE NEMOURS POWDER Co. v. H. & B. V. Ry. Co.* March 9, 1920. Reparation for \$2,072.79, on shipments of sulphur from Bryan Mound, Tex., to Connable Ala., on account of unreasonable and illegal charges.

9493. *WEST VA. RAIL Co. v. C. & O. Ry. Co.* March 9, 1920. Reparation for \$3,831.32, on shipments of steel rails from Huntington, W. Va., to New York, N. Y., for export, on account of unreasonable rates.

9531. *ROCKFORD PAPER BOX BOARD Co. v. C., M. & ST. P. Ry. Co.* March 9, 1920. Reparation for \$324.88, on shipments of boxboard from Rockford, Ill., to Kansas City, Mo., on account of unreasonable rates.

9699. *HOLT Mfg. Co. v. S. P. Co.* March 9, 1920. Reparation for \$73.99, on shipments of steel lubricating or grease cups from Battle Creek, Mich., and certain other points, to Stockton, Calif., on account of unreasonable rates.

10200. *REFINITE Co. v. C. & N. W. Ry. Co.* March 9, 1920. Reparation for \$614.97, on shipments of crude clay in bulk from Buffalo Gap, S. Dak., to Des Moines, Iowa, on account of unreasonable charges.

10459. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL.* March 9, 1920. Reparation for \$1,671.09, on shipments of soda ash shipped from Newark, N. J., to Hopewell, Va., on account of damages due to the misrouting by initial carrier and illegal charges.

10474. *SONKEN-GALAMBA IRON & METAL Co. v. DIRECTOR GENERAL.* March 9, 1920. Reparation for \$314.78, on shipments of scrap iron from certain points in southeastern Arkansas to Kansas City, Mo., on account of unreasonable rates.

9192. *WILSON & Co. v. C. M. & St. P. Ry. Co.* April 6, 1920. Reparation for \$233.89, on shipments of hogs from Sioux Falls, S. Dak., to Chicago, Ill., on account of unreasonable rates.

9360. *So. Eng. & Cons. Co. v. St. L., S. F. Ry. Co.* April 6, 1920. Reparation for \$1,357.09, on shipments of rails and angle bars from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., on account of unreasonable charges.

9597. *METROPOLIS COMMERCIAL CLUB v. I. C. R. R. Co.* April 6, 1920. Reparation for \$10,051.94, on shipments of logs, lumber, and lumber commodities from points in Louisiana, Arkansas, Texas, and Oklahoma to Metropolis, Ill., on account of unreasonable rates.

9959 and Sub-Nos. 1 and 2. *LARROWE MILLING Co. v. C., W. & L. E. Ry. Co.* April 6, 1920. Reparation for \$447.82, on shipments of dried beet pulp from Wallaceburg, Ontario, to points in New York and New Jersey, on account of unreasonable charges.

9969. *SPRINGFIELD, TENN., v. L. & N. R. R. Co.* April 6, 1920. Reparation for \$2,701.96, on shipments of coal from western Kentucky mines to Springfield, Tenn., on account of unreasonable rates.

9981. *AETNA EXPLOSIVES Co. v. A. G. S. R. R. Co.* April 20, 1920. Reparation for \$22,470.69, on shipments of sulphuric acid from points in the southeast to Emporium, Sinnemahoning, Mount Union, and Oakdale, Pa., on account of unreasonable rates.

9992. *AETNA EXPLOSIVES Co. v. A. G. S. R. R. Co.* April 6, 1920. Reparation for \$25,336.45, on shipments of sulphuric acid from points in Mississippi, Alabama, and Georgia to Copperhill, Tenn., on account of unreasonable rates.

10009. *N. O. JOINT TRAFFIC BUREAU v. K. C. S. Ry. Co.* April 6, 1920. Reparation for \$3,515.01, on shipments of box lumber from New Orleans, La., to Port Arthur, Tex., on account of unreasonable rates.

10254. *MONARCH PAPER Co. v. C. P. Ry. Co.* April 6, 1920. Reparation for \$703.78, on shipments of china clay from Montreal Wharf, Quebec, to Kalamazoo, Mich., on account of unreasonable rates.

10331. *WITTENBERG-KING Co. v. DIRECTOR GENERAL.* April 6, 1920. Reparation for \$1,450.23, on shipments of cull apples from Peshastin, Cashmere, Wenatchee, and Monitor, Wash., to Portland, Oreg., on account of unreasonable rates.

10402. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL.* April 6, 1920. Reparation for \$1,424.43, on shipments of sulphuric acid from Perth Amboy, N. J., to Philadelphia, Pa., on account of unreasonable and illegal charges.

10441 and Sub-No. 1. *VOLKER & Co. v. DIRECTOR GENERAL.* April 6, 1920. Reparation for \$670.28, on shipments of congoletum from Philadelphia and Marcus Hook, Pa., to Denver, Colo., on account of unreasonable rates.

10471 and 10506. *N. Y. COMMISSION OF HIGHWAYS v. DIRECTOR GENERAL.* April 6, 1920. Reparation for \$4,689.72, on shipments of crushed stone and sand from Tompkins Cove and Buffalo, N. Y., to points in the state of New York, on account of unreasonable rates.

10520. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL.* April 6, 1920. Reparation for \$942.76, on shipments of niter cake from Carney's Point, N. J., to Norfolk, Va., on account of unreasonable rates.

5200 and 5286. *WHEELER & MOTTER MERCANTILE Co. v. A., T. & S. F. Ry. Co.; Smith & Co., v. C., B. & Q. R. R. Co.* May 11, 1920. Reparation for \$1,311.03, on shipments of cotton piece goods originating in New England and the south from points on the Mississippi River to points on the Missouri River, on account of unreasonable rates.

9062. SHARON STEEL HOOP Co. v. P. Co. May 11, 1920. Reparation for \$18,144.14, on account of defendant's refusal to compensate complainant for the expense of spotting cars moving interstate to and from complainant's plant at Farrell, Pa.

9146. MCGOWAN-FOSHEE LUMBER Co. v. F., A. & G. R. R. Co. May 11, 1920. Reparation for \$1,164.39, on shipments of yellow-pine lumber from Falco, Ala., to destinations north of the Ohio River, on account of unreasonable and illegal rates.

9421. CAMERON & Co. v. A., T. & S. F. Ry. Co. May 11, 1920. Reparation for \$3,854.49, on shipments of window glass from Okmulgee, Okla., to Waco, Tex., on account of unreasonable rates.

9432. BOWIE LUMBER Co. v. M. L. & T. R. R. & S. S. Co. May 11, 1920. Reparation for \$404.19, on shipments of hewn cypress cross-ties from Bowie and Des Allemands, La., to Eureka, Tex., on account of unlawful and unreasonable rates.

9801. LOVELAND & HINYAN Co. v. D. & H. Co. May 11, 1920. Reparation for \$575.92, on shipments of potatoes from points in Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa., on account of unreasonable rates.

9903. BOLDT Co. v. C., B. & Q. R. R. Co. May 11, 1920. Reparation for \$120.95 on shipments of glass bottles from Huntington, W. Va., to St. Paul and Minneapolis, Minn., on account of unreasonable rates.

10070. NASHVILLE TRAFFIC BUREAU v. L. & N. R. R. Co. May 11, 1920. Reparation for \$1,948.85, on shipments of coal from western Kentucky mines to Nashville, Tenn., on account of unreasonable rates.

10203. THREE STATES TIE Co. v. C. & E. I. R. R. Co. May 11, 1920. Reparation for \$1,464.07, on shipments of cross-ties from St. Elmo and other points in Illinois to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, on account of unreasonable rates.

10424. DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL. May 11, 1920. Reparation for \$510.60, on shipments of sulphuric acid from Hopewell, Va., to Gibbstown and Carneys Point, N. J., on account of unreasonable rates.

10466. DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL. May 11, 1920. Reparation for \$1,247.41, on shipments of nitrate of soda from Port Richmond, Pa., to Carney's Point, N. J., on account of unreasonable rates.

10480. KEET & ROUNTREE DRY GOODS Co. v. DIRECTOR GENERAL. May 11, 1920. Reparation for \$1,323.52, on shipments of cotton piece goods from Boston, Mass., and other eastern seaboard points, to Springfield, Mo., over water-and-rail and rail-water-and-rail routes through Memphis, Tenn., on account of unreasonable rates.

10587. LEHIGH PORTLAND CEMENT Co. v. DIRECTOR GENERAL. May 11, 1920. Reparation for \$5,314.33, on shipments of portland cement from Chapman, Pa., to Lugoff, S. C., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$131,420.33.

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TABLE OF COMMODITIES.

[The number in parentheses following citation indicates where commodity is considered.]

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CAKE COCONUT-OIL. Hammond Ind., from Undercliff, N. J., and Port Ivory, Staten Island, N. Y., 363.

CAKE, COPRA. Hammond, Ind, from Undercliff, N. J., and Port Ivory, Staten Island, N. Y., 363.

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CINDER, MILL. Terre Haute, Ind., to Rockwood, Tenn., 549.

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- Appalachia and Dante coal fields, Va., to Spartanburg and other South Carolina points, 584.
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Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

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MOLASSES, REFUSE. Pine Bluff, Ark., from Sugar City and Blackfoot, Idaho, 179.

NEWSPAPERS. Kansas City, Mo., to Lawrence, Kans., 743.

OATS:

Chicago, Ill., to Picayune, Miss., 701.

Tacoma, Wash., and Portland and Helix, Oreg., from South Dakota, consolidated at Minneapolis, Minn., 629.

OIL, CREOSOTE. New Orleans, La., to Birmingham, Ala., 410.

OIL, FUEL. Chicago, Ill., from Kansas City, Mo.-Kans., 197.

OIL, REFINED. Chicago, Ill., from Kansas City, Mo.-Kans., 197.

OIL, SOYA-BEAN:

Los Angeles, Cal., to Ivorydale, Ohio, 42.

Seattle, Wash., to Babbitt, N. J., imported from Japan, 755.

ONIONS. Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

ORANGES:

Arkansas from New Orleans, La., Mobile, Ala., and Jacksonville, Fla., 231.

California to various destinations and Canada. Precooling and pre-icing, 580.

ORE, COPPER. Bisbee, Ariz., to Douglas, Ariz., 332.

Ovens, BAKING AND DRYING. Detroit, Mich., to Oakland, Calif., 149.

PACKING, PIPE. Philadelphia, Pa., to Clarkdale, Ariz., 483.

PACKING-HOUSE PRODUCTS:

Terre Haute, Ind., to Chicago, Ill., switching district, 691.

Waterloo, Iowa, to Macomb and Galesburg, Ill., 170.

PAPER. New York and Brooklyn, N. Y. Loading, 886.

PAPER STOCK. New York and Brooklyn, N. Y. Loading, 686.

PAPER, TOILET. Green Bay, Wis., to Muskogee, Okla., 125.

PAPER, WRAPPING. Muskogee, Tulsa, and McAlester, Okla., from Menominee, Mich., and points in Wisconsin, 125.

PEANUTS. Suffolk, Va., to El Paso, Tex., 520.

PETROLEUM:

Coffeyville, Kans., to Healdton, Okla., 663.

Mid-continent oil field, Kans.-Okla., to Eau Claire, Chippewa Falls, and Menomonie, Wis., 152.

PETROLEUM, CRUDE. Burkburnett, Tex., to Oklahoma City, Okla., 22.

PETROLEUM PRODUCTS:

Coffeyville, Kans., to Healdton, Okla., 663.

Mid-continent oil fields, Okla.-Kans., to Eau Claire, Chippewa Falls, and Menomonie, Wis., 152.

PETROLEUM PRODUCTS, REFINED. Kansas and Oklahoma to Milwaukee and Racine, Wis., 597.

PICKLES IN BRINE. New York Mills, Minn., to Omaha, Nebr., 294.

PINEAPPLES. Arkansas from New Orleans, La., Mobile, Ala., and Jacksonville, Fla., 231.

PIPE, CAST-IRON. Burlington, N. J. Spotting charges, 677.

PIPE, CAST-IRON PRESSURE. Bessemer, Ala. Switching and spotting service, 442.

PIPE, WROUGHT-IRON. Beaumont, Tex., to Midlan, Kans., 437.

PIPE, WROUGHT-STEEL. Philadelphia, Pa., to Clarkdale, Ariz., 483.

PLASTER. Grand Rapids, Mich., to Wisconsin, Michigan, and Minnesota, 264.

POTATOES:

Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

Minnesota to official classification territory. Minimum weight, 385.

PRESS BED. Waukegan, Ill., to Champlaln, N. Y., 499.

PROPS, MINE:

Eastern shore territory of Virginia, Delaware, and Maryland to points in the anthracite coal region of Pennsylvania, 35.

Eastern shore territory of Virginia, Delaware, and Maryland to Shenandoah, Pa., and other points in the anthracite coal region, 31.

RAGS. New York and Brooklyn, N. Y. Loading, 686.

RAILS. Steele, Mo., to Madison and East St. Louis, Ill., 141.

RAILS, OLD. Lafayette, La., to East St. Louis and Madison, Ill., 479.

RICE, CLEAN. Beaumont, Orange, Galveston, and Houston, Tex., to eastern seaboard territory, 189.

ROCK, LIME. Forrest, Ariz., to Douglas, Ariz., 332.

SAND. Bessemer, Ala. Switching and spotting service, 442.

SAND, GLASS. Ottawa, Millington, Utica, and Wedron, Ill., to Huntington and West Huntington, W. Va., 259.

SEED, SWEET-CLOVER. Wheatland, Wyo., to Kansas City, Mo., 637.

SEPARATORS, CENTRIFUGAL CREAM. Official, western, and southern classification territories. Ratings, 668.

SEPARATORS, IRON STEAM. Philadelphia, Pa., to Clarkdale, Ariz., 483.

SHAVINGS, COTTONSEED HULL. Hopewell, Va., from southeastern and Carolina territories, 54 (59).

SHEET-METAL WORK, BUILDING. Official classification territory. Rating, 52.

SIRUP, CORN. Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

SMELTER PRODUCTS. Miami and Hayden, Ariz., and El Paso, Eagle Pass, Laredo, and Brownsville, Tex., to Galveston, Tex., 723 (733).

SMELTER PRODUCTS, ZINC:

Baltimore, Md. Refining-in-transit, 723.

Mexico to United States, 723.

SODA, CAUSTIC. Elkton, Md., to Hopewell, Va., 361.

SODA, NITRATE OF. North Atlantic ports to Hegewisch, Ill., and Ivorydale and Willow, Ohio, 222.

STAVES. Brilliant, Ala., to Paducah, Ky., 37.

STAVES, GUM. Houma, La., from Pascola, Mo., and Success, Ark., 471.

STAVES, SLACK BARREL GUM. Greenwood, Miss., to Hastings, Fla., 753.

STEEL ARTICLES :

Galveston and Houston, Tex., to Oklahoma and Louisiana, 390.

Minnequa, Colo., to Seattle, Wash., Portland, Oreg., and San Francisco and Los Angeles, Calif., 253.

Pacific coast ports from Chicago, Ill., and Terre Haute and Vincennes, Ind., for export to the Orient, 339.

STEEL PRODUCTS. North Tonawanda, Buffalo rate district, N. Y. Car spotting, 745.

STOVES. Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

SUGAR :

Montgomery, Ala., from New Orleans, La., and Savannah, Ga., 610.

New Orleans, La., to Mobile, Ala., 605.

SULPHUR. Bryanmound, Tex., to Bayway, N. J., 177.

SULPHUR, CRUDE. Bryanmound, Tex., to Thompsons Point, N. J., 507.

TAR. Birmingham, Ala., from Jacksonville and Pensacola, Fla., Savannah and Brunswick, Ga., Charleston, S. C., New Orleans, La., and Memphis, Chattanooga, and Nashville, Tenn., 410.

TIES, CROSS :

Mississippi to Indiana and Ohio, 286.

St. Elmo and other Illinois points to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, 24.

TILE, CONCRETE DRAIN. Sioux City, Iowa, to South Dakota, 303.

TILE, HOLLOW BUILDING. Deepwater, Mo., to Chickasha, Okla., and other points, 459

TIRES, PNEUMATIC RUBBER. Akron, Ohio, and other points in official and western classification territories to Atlanta, Ga., and other points in southern classification territory, 206.

TIRES, SOLID RUBBER. Akron, Ohio, and other points in official and western classification territories to Atlanta, Ga., and other points in southern classification territory, 206.

TOMATOES. Jacksonville, Fla., to Arkansas, 231 (237).

TRACK, PORTABLE RAILWAY. Cleveland, Ohio, to New York, N. Y., Greenville Piers, N. J., and Baltimore, Md., for export, 311.

TUBES, RUBBER TIRE. Akron, Ohio, and other points in official and western classification territories to Atlanta, Ga., and other points in southern classification territory, 206.

VEGETABLES :

Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

Jacksonville, Fla., to Arkansas, 231.

Kansas and Missouri to Iowa and Nebraska, and Iowa to and from Nebraska. Refrigeration, 426.

Western trunk line territory. Refrigeration, 249.

VEGETABLES, CANNED. Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

WHEAT. Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis., 11.

WOOD, PULP. Roaring Spring, Pa., from Beaver Dam, Hewlett, Verdon, Tyler, and Arvonla, Va., 329.

ZINC. Anaconda and Black Eagle, Mont., to Chicago district, central freight association, eastern trunk line, and New England territories, 723.

ZINC, CHLORIDE OF. Official, southern, and western classification territories. Rules and charges for return transportation of unloaded portion of, 201.

TABLE OF LOCALITIES.

[The number in parentheses following citation indicates where locality is considered.]

- Aberdeen, Miss., to Memphis, Tenn., diverted to Cairo, Ill., and subsequently diverted to Alton, Ill. Lumber, 623.
- Aberdeen, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Akron, Ohio, to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
- Alabama to Hopewell, Va. Cottonseed hull shavings and sulphuric acid, 54.
- Alabama to Mobile, Ala., for export. Cotton, 554.
- Alabama to and from North Carolina. Class and commodity rates, 523.
- Alabama to various destinations. Lumber, 698.
- Albia, Iowa, from Isanti, Minn. Potatoes; minimum weight, 385.
- Alcester, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Alton, Ill., from Aberdeen, Miss., diverted at Memphis, Tenn., and subsequently diverted at Cairo, Ill. Lumber, 623.
- Amery, Wis. Grain; demurrage, 398.
- Anaconda, Mont., to Chicago district, central freight association, eastern trunk line, and New England territories. Copper and zinc, 723.
- Anaconda, Mont., from Los Angeles, Calif. Grinding balls, 184.
- Andover, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Andover, Va., to Old Fort, N. C. Bituminous coal, 354.
- Appalachia, Va., to Old Fort, N. C. Bituminous coal, 354.
- Appalachia coal field, Va., to Old Fort, N. C. Bituminous coal, 354.
- Appalachia coal field, Va., to Spartanburg and other South Carolina points. Bituminous coal, 584.
- Appleton, Wis., to McAlester, Okla. Wrapping paper, 125.
- Arizona from Crestmore, Calif. Cement, 291.
- Arizona from Los Angeles, Calif. Grinding balls, 184.
- Arizona to New York, N. Y., Galveston, Tex., and New Orleans, La. Copper bullion, 714.
- Arkansas from New Orleans, La., Mobile, Ala., and Jacksonville, Fla. Fruits, vegetables, and coconuts, 231.
- Arkansas City, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Arlington, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- Arno, Va., to Old Fort, N. C. Bituminous coal, 354.
- Arvonla, Va., to Roaring Spring, Pa. Pulp wood, 329.
- Asheville, N. C., from Chattanooga, Tenn. Common brick, 296.
- Ashland, Ky., to and from Portsmouth, Ohio. Class and commodity rates, 78.
- Atlanta, Ga., from Akron, Wooster, and East Palestine, Ohio, Buffalo, N. Y., and Cumberland, Md. Rubber tires and tubes, 206.
- Atlanta, Ga., to and from Moss Point and Pascagoula, Miss. Class and commodity rates, 112.
- Babbitt, N. J., from Seattle, Wash., imported from Japan. Soyo-bean oil, 755.
- Baltimore, Md. Copper, lead, and smelter products; Refining in transit. 723.
- Baltimore, Md., from Cleveland, Ohio, for export. Portable railway track, 311.

- Baltimore, Md., to Hegewisch, Ill., and Ivorydale and Willow, Ohio. Nitrate of soda, 222.
- Baltimore, Md., to and from Huntington, W. Va. Class and commodity rates, 64.
- Baltimore, Md., to Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (118).
- Bartlett, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 133.
- Batesville, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Bayway, N. J., from Bryanmound, Tex. Sulphur, 177.
- Beaumont, Tex., to eastern seaboard territory. Clean rice, 189.
- Beaumont, Tex., to Midian, Kans. Wrought-iron pipe, 437.
- Beaver Brook colliery, Pa., to Elizabethport, N. J. Anthracite coal, 381.
- Beaver Dam, Va., to Roaring Spring, Pa. Pulp wood, 329.
- Bellemont, Ariz., to Los Angeles, Calif., reshipped to Williams, Ariz. Locomotive and tender, 167.
- Bessemer, Ala. Switching and spotting service, 442.
- Binghamton, N. Y., to Chattanooga and Memphis, Tenn. Medicines, 453.
- Birmingham, Ala., from Jacksonville and Pensacola, Fla., Savannah and Brunswick, Ga., Charleston, S. C., New Orleans, La., and Memphis, Chattanooga, and Nashville, Tenn. Tar, 410.
- Birmingham, Ala., from New Orleans, La. Creosote oil, 410.
- Birmingham, Ala., to St. Louis, Mo., reconsigned to McGill, Nev. Pig iron, 491.
- Bisbee, Ariz., from Crestmore, Calif. Cement, 291.
- Bisbee, Ariz., to Douglas, Ariz. Copper ore, 332.
- Bixby, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 103.
- Black Eagle, Mont., to Chicago district, central freight association, eastern trunk line, and New England territories. Copper and zinc, 723.
- Black Eagle, Mont., from Los Angeles, Calif. Grinding balls, 184.
- Blackfoot, Idaho, to Pine Bluff, Ark. Refuse molasses, 179.
- Blanchards, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- Bloomington, Ind., from Wesson, Ark., reconsigned at Little Rock, Ark. Lumber, 139.
- Blythe Junction, Calif., from Millers, Nev. Second-hand mining machinery, 39.
- Blytheville, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Boston, Mass., to Springfield, Tenn. Class and commodity rates, 337.
- Bridgeton, N. J. Bituminous coal; demurrage, 439.
- Brilliant, Ala., to Paducah, Ky. Staves, 37.
- Brokaw, Wis., to Muskogee, Okla. Wrapping paper, 125.
- Brooklyn, N. Y. Waste paper stock; loading, 686.
- Brooklyn, N. Y., from Tigheview (Weaver), W. Va. Chestnut lumber, 450.
- Brownsville, Tex., to Galveston, Tex. Smelter products, 723.
- Bruce, S. Dak., to Tacoma, Wash., consolidated at Minneapolis, Minn. Oats, 629.
- Brunswick, Ga., to Birmingham, Ala. Tar, 410.
- Bryanmound, Tex., to Bayway, N. J. Sulphur, 177.
- Bryanmound, Tex., to Thompsons Point, N. J. Crude sulphur, 507.
- Buffalo, N. Y. Pig iron, steel products, and ferromanganese; car spotting, 745.
- Buffalo, N. Y., to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
- Buffalo rate district, N. Y. Pig iron, steel products, and ferromanganese; car spotting, 745.
- Burkburnett, Tex., to Oklahoma City, Okla. Crude petroleum, 22.

- Burlington, N. J. Cast-iron pipe, pipe fittings and castings; spotting charges, 677.
- Burr Oak, Ill., to Terre Haute, Ind. Scrap iron, 547.
- Butte, Mont., from Los Angeles, Calif. Grinding balls, 184.
- Cadillac, Mich., to and from New York, N. Y., and other points in trunk line territory. Class and commodity rates; fourth section, 418.
- Cairo, Ill., from Memphis, Tenn., originating at Aberdeen, Miss., and diverted to Alton, Ill. Lumber, 623.
- Cairo, Ill., to Meridian and Jackson, Miss. Class and commodity rates, 107.
- Cairo, Ill., to Monroe and West Monroe, La. Coarse grain, 227.
- Cairo, Ill., from Slaughters, Ala., reconsigned to Cincinnati, Ohio. Yellow-pine lumber, 496.
- Calico Rock, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- California to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- California to various destinations and Canada. Oranges; precooling, and preicing, 580.
- Camden, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Cameron, Wis., to Pittsburgh, Pa. Potatoes; minimum weight, 385.
- Camp Pike, Ark., from Fort Worth, Lexington, and Cross Plains, Tex., and Kansas City, Mo. Hogs, 474.
- Camp Pike, Ark., to St. Louis and Kansas City, Mo., National Stock Yards, Ill., and Oklahoma City, Okla. Hogs, 474.
- Canada from California. Oranges; precooling and preicing, 580.
- Canada from Evans, Wash., destined to Okanogan, Wash. Lime, 324.
- Canada to Habana, Cuba, through the United States. Hay, 289.
- Canova, S. Dak., to Portland, Oreg., consolidated at Minneapolis, Minn. Oats, 629.
- Canton, N. C., from Coal Creek, Tenn. Bituminous coal, 349.
- Canton, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Cape Charles, Va. Lumber; demurrage, 129, 281.
- Carbell Spur, Ark., from Fort Worth, Lexington, and Cross Plains, Tex., and Kansas City, Mo. Hogs, 474.
- Carbell Spur, Ark., to St. Louis and Kansas City, Mo., National Stock Yards, Ill., and Oklahoma City, Okla. Hogs, 474.
- Carney's Point, N. J., to Hopewell, Va. Sulphuric acid, 270.
- Carney's Point, N. J., from Pennsylvania mines, diverted at Enola, Pa. Bituminous coal, 461.
- Carolina territory to Hopewell, Va. Cotton linters, cottonseed hull shavings, and sulphuric acid, 54.
- Carter, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Cross-ties, 24.
- Casa Grande, Ariz., from Crestmore, Calif. Cement, 291.
- Cedar Point, Ill., to and from Oglesby, Ill. Passenger fares, 367.
- Cementville, Tex., from Witcher, Worley, and Vogle, Tex. Lignite, 45.
- Center City, Minn., to Terre Haute, Ind. Potatoes; minimum weight, 385.
- Central freight association territory from Northport, Wash., International, Utah, Miami, Ariz., and Anaconda and Black Eagle, Mont. Lead, copper, zinc, and lead bullion, 723.
- Champlain, N. Y., from Waukegan, Ill. Press rising bed of embossing machine, 490.

- Charleston, S. C., to Birmingham, Ala. Tar, 410.
 Charleston, S. C., to Hopewell, Va. Sulphuric acid, 54 (61).
 Charleston, S. C., from Wilmington, N. C. Pyrites cinders, 551.
 Charlotte, N. C., to Hopewell, Va. Sulphuric acid, 54 (61).
 Chattanooga, Tenn., to Asheville, N. C. Common brick, 296.
 Chattanooga, Tenn., from Binghamton, N. Y. Medicines, 453.
 Chattanooga, Tenn., to Birmingham, Ala. Tar, 410.
 Chattanooga, Tenn., to and from Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (117).
 Chester, Pa. Gasoline; demurrage, 48.
 Chicago, Ill. Grain; demurrage, 398.
 Chicago, Ill., to Helena, Ark. Class and commodity rates, 11.
 Chicago, Ill., from Kansas City, Mo.-Kans. Fuel and refined oil, 197.
 Chicago, Ill., to Meridian and Jackson, Miss. Class and commodity rates, 107.
 Chicago, Ill., to and from Moss Point and Pascagoula, Miss. Class and commodity rates, 112 (117).
 Chicago, Ill., to Pacific coast ports for export to the Orient. Iron and steel articles, 339.
 Chicago, Ill., to Picaune, Miss. Oats, 701.
 Chicago, Ill., from St. Elmo and other Illinois points, stopped at Terre Haute, Ind., for creosoting. Cross-ties, 24.
 Chicago, Ill., to Springfield, Tenn. Class and commodity rates, 337.
 Chicago, Ill., to Terre Haute, Ind. Scrap iron, 547.
 Chicago, Ill., to Wisconsin and Michigan, and Duluth, Minn. Berries, fruits, melons, and vegetables; refrigeration, 249.
 Chicago district from Northport, Wash., International, Utah, Miami, Ariz., and Anaconda and Black Eagle, Mont. Copper, lead, and zinc, 723.
 Chicago switching district to Iowa. Brick, 320.
 Chicago switching district from Terre Haute, Ind. Salted meats and packing house products, 691.
 Chicago switching district to Terre Haute, Ind. Scrap iron, 547.
 Chickasha, Okla., from Deepwater, Mo. Sewer segment blocks and hollow building tile, 459.
 Chile to north Atlantic ports destined to Hegewisch, Ill., and Ivorydale and Willow, Ohio. Nitrate of soda, 222.
 Chippewa Falls, Wis., from midcontinent oil field, Kans.-Okla. Petroleum and products, 152.
 Cincinnati, Ohio, from Cairo, Ill., originating at Slaughters, Ala. Yellow-pine lumber, 496.
 Cincinnati, Ohio, to Springfield, Tenn. Class and commodity rates, 337.
 Clarkdale, Ariz., from Dawson, N. Mex. Coal, 300.
 Clarkdale, Ariz., from Grape, Calif. Hay, 181.
 Clarkdale, Ariz., from Lompoc, Calif. Infusorial earth, 625.
 Clarkdale, Ariz., to New York, N. Y., Galveston, Tex., and New Orleans, La. Copper bullion, 714.
 Clarkdale, Ariz., from Philadelphia Pa. Wrought steel pipe, bolts, packing, iron steam separators, fittings and gauges, 483.
 Clemo, Pa., to Undercliff (Edgewater), N. J. Anthracite coal, 434.
 Cleveland, Ohio. Barrels; demurrage, 423.
 Cleveland, Ohio. Switching charges, 660.
 Cleveland, Ohio, to New York, N. Y., Greenville Piers, N. J., and Baltimore, Md., for export. Portable railway track, 311.

- Clifton, Ariz., from Los Angeles, Calif. Grinding balls, 184.
 Coal Creek, Tenn., to Canton, N. C. Bituminous coal, 349.
 Coatesville, Pa., from West Virginia mines, diverted at Rutherford, Pa. Bituminous coal, 621.
 Cobre, Nev., from Los Angeles, Calif. Grinding balls, 184.
 Coffeyville, Kans., to Healdton, Pa. Petroleum and products, 663.
 Coffeyville, Kans., from Ogemaw, Ark., reconsigned at Jonesboro, Ark. Lumber, 145.
 Coleraine colliery, Pa., to Elizabethport, N. J. Anthracite coal, 381.
 Colliery, Ill., to Illinois and various interstate destinations. Coal; divisions and absorptions of switching charges, 274.
 Connecticut from Virginia, North Carolina, and South Carolina, reconsigned at Cape Charles, Va. Lumber, 129.
 Corona, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
 Cotter, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
 Council Bluffs, Iowa, to Omaha and Grand Island, Nebr. Fruits and vegetables; refrigeration, 428.
 Cove, Oreg., to Union, Oreg., destined to Regina, Saskatchewan. Cherries; express rates, 511.
 Covington, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 133.
 Coxton, Pa., to Detroit, Mich. Anthracite coal, 241.
 Coxton, Pa., to East Ithaca, N. Y. Anthracite coal, 157.
 Coxton, Pa., to Iowa, Kansas, Missouri, and Nebraska. Anthracite coal, 739.
 Crestmore, Calif., to Miami and other Arizona points. Cement, 291.
 Cross Plains, Tex., to Camp Pike and Carbell Spur, Ark. Hogs, 474.
 Cumberland, Md., to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
 Dallas, Tex., from San Francisco and Oakland, Calif., and Seattle, Wash. Copra, 465.
 Dante district, Va., to Spartanburg and other South Carolina points. Bituminous coal, 584.
 Dante mine group, Va., to Old Fort, N. C. Bituminous coal, 354.
 Dawson, N. Mex., to Clarkdale and Jerome, Ariz. Coal, 300.
 De Queen, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
 Deepwater, Mo., to Chickasha, Okla., and other points. Sewer segment blocks and hollow building tile, 459.
 Deerbrook, Wis., to Lansing, Mich., diverted at Milwaukee, Wis. Lumber, 493.
 Delaware to anthracite coal region of Pennsylvania. Mine props, 31 (35).
 Delaware to and from North Carolina. Class and commodity rates, 523.
 Delaware to Shenandoah, Pa., and other points in the anthracite coal region. Mine props, 31.
 Dermott, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
 Derry, La., to Dupon, Ill., reconsigned to Rushville, Ind. Yellow-pine lumber, 635.
 Des Moines, Iowa, from Missouri. Walnut logs, 119.
 Detroit, Mich. Absorption of switching charges, 97.
 Detroit, Mich., from Coxton, Pa. Anthracite coal, 241.
 Detroit, Mich., to Oakland, Calif. Baking and drying ovens, 149.
 Detroit, Mich., from Philadelphia, Pa. Electric storage batteries, 131.
 57 I. C. C.

- Detroit, Mich., to Springfield, Tenn. Class and commodity rates, 337.
- Dewey, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 133.
- Dolton, Ill., to Iowa. Brick, 320.
- Douglas, Ariz., from Bisbee, Ariz. Copper ore, 332.
- Douglas, Ariz., from Crestmore, Calif. Cement, 291.
- Douglas, Ariz., from Forrest, Ariz. Lime rock, 332.
- Douglas, Ariz., to New York, N. Y., Galveston, Tex., and New Orleans, La. Copper bullion, 714.
- Dover, N. J., from Scranton, Pa. Barley coal, 147.
- Drexel, N. C., from Sulligent, Ala. Lumber, 509.
- Duluth, Minn., from Chicago, Ill., and St. Paul and Minneapolis, Minn. Berries, fruits, melons, and vegetables; refrigeration, 249.
- Dunmore, Pa., to Iowa, Kansas, Missouri, and Nebraska. Anthracite coal, 739.
- Dupo, Ill., from Derry, La., reconsigned to Rushville, Ind. Yellow-pine lumber, 635.
- Durham, N. C., to Hopewell, Va. Sulphuric acid, 54 (61).
- Eagle Pass, Tex., to Galveston, Tex. Smelter products, 723.
- East Ithaca, N. Y., from Coxton, Pa. Anthracite coal, 157.
- East Norwood, Ohio, from Gable, S. C. Cypress lumber, 501.
- East Palestine, Ohio, to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
- East Point, Ga., to Hopewell, Va. Cotton linters, 54 (58).
- East St. Louis, Ill. Allowances to short lines, 371.
- East St. Louis, Ill., from La Fayette, La. Old rails, 479.
- East St. Louis, Ill., from Steele, Mo. Rails and angle bars, 141.
- Eastern cities from Huntington, W. Va. Glass bottles, 64.
- Eastern seaboard territory from Orange, Beaumont, Galveston, and Houston, Tex. Clean rice, 189.
- Eastern shore territory to anthracite coal region of Pennsylvania. Mine props, 31 (35).
- Eastern shore territory to Shenandoah, Pa., and other points in the anthracite coal region. Mine props, 31.
- Eastern trunk line territory from Anaconda and Black Eagle, Mont., International, Utah, Miami, Ariz., and Northport, Wash. Copper, lead, and zinc, 723.
- Eastern trunk line territory to and from South Bend and other Indiana points. Class and commodity rates, 215.
- Eau Claire, Wis., from midcontinent oil field, Kans.-Okla. Petroleum and products, 152.
- Edgewater (now Undercliff), N. J., from Wayne washery, Clemo, Pa. Anthracite coal, 434.
- El Jardsville Junction, Ill. Allowances to short lines, 371.
- El Dorado, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- El Paso, Tex., to Galveston, Tex. Smelter products, 723.
- El Paso, Tex., from Suffolk, Va. Peanuts, 520.
- Electra, Tex., to North Baton Rouge, La. Liquefied petroleum gas, 137.
- Elizabethport, N. J., from Pennsylvania mines. Anthracite coal, 381.
- Elizabethport, N. J., from Red Ash colliery, Pa., for reshipment. Anthracite coal, 432.
- Elizabethport, N. J., from Wyoming coal district, Pa. Anthracite coal, 414.
- Elk Point, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Elk River, Idaho, to New York, N. Y. Lumber, 272.

- Elkhart, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Elkton, Md., to Hopewell, Va. Caustic soda, 361.
- Elrod, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Emerson, Ark., to Magnolia, Ark., there compressed and reshipped to New Hampshire and Massachusetts. Cotton, 486.
- Enola, Pa., from Pennsylvania mines, diverted to Carneys Point, N. J. Bituminous coal, 461.
- Eudora, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Evans, Wash., to Okanogan, Wash., via Canada. Lime, 324.
- Evansville, Ind., to Springfield, Tenn. Class and commodity rates, 337.
- Exeter, Va., to Old Fort, N. C. Bituminous coal, 354.
- Fairview, S. Dak., to Portland, Oreg., consolidated at Minneapolis, Minn. Oats, 629.
- Fayetteville, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Flint, Mich., from Philadelphia, Pa. Electric storage batteries, 131.
- Florida to Hopewell, Va. Sulphuric acid, 54 (61).
- Florida to and from North Carolina. Class and commodity rates, 523.
- Fordyce, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Formosa Junction, Ill. Allowances to short lines, 371.
- Forrest, Ariz., to Douglas, Ariz. Lime rock, 332.
- Forrest City, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Fort Dodge, Iowa, to and from points in official classification territory east of Indiana-Illinois state line. Class rates, 343.
- Fort Huachuca, Ariz., from Crestmore, Calif. Cement, 291.
- Fort Worth, Tex., to Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Gable, S. C., to East Norwood, Ohio. Cypress lumber, 501.
- Galesburg, Ill., from Waterloo, Iowa. Fresh meats and packing-house products, 170.
- Galveston, Tex., from Arizona. Copper bullion, 714.
- Galveston, Tex., to eastern seaboard territory. Clean rice, 189.
- Galveston, Tex., from Miami and Hayden, Ariz., El Paso, Eagle Pass, Laredo, and Brownsville, Tex. Smelter products, 723.
- Galveston, Tex., to Oklahoma and Louisiana. Iron and steel articles, 390.
- Garfield, Utah, from Los Angeles, Calif. Grinding balls, 184.
- Georgia to Hopewell, Va. Cottonseed hull shavings and sulphuric acid, 54.
- Georgia to Mobile, Ala., for export. Cotton, 554.
- Georgia to and from North Carolina. Class and commodity rates, 523.
- Glendive, Mont., from California. Lemons, 327.
- Glenpool, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 133.
- Glens Falls, N. Y., to Groton, Conn., via Midway, Conn. Cement, 704.
- Globe, Ariz., from Crestmore, Calif. Cement, 291.
- Globe, Ariz., to New York, N. Y., Galveston, Tex., and New Orleans, La. Copper bullion, 714.
- Goshen, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Grand Island, Neb., from Council Bluffs, Iowa, St. Joseph, Mo., and Wathena, Kans. Fruits and vegetables; refrigeration, 426.
- Grand Rapids, Mich., to Springfield, Tenn. Class and commodity rates, 337.

- Grand Rapids, Mich., to Wisconsin, Michigan, and Minnesota. Plaster and gypsum products, 264.
- Granite City, Ill., to Helena, Ark. Class and commodity rates, 11.
- Grape, Calif., to Clarkdale, Ariz. Hay, 181.
- Grassell, Ala., to Hopewell, Va. Sulphuric acid, 54 (61).
- Green Bay, Wis., to Muskogee, Okla. Toilet paper, 125.
- Greenville, N. H., from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- Greenville Piers, N. J., from Cleveland, Ohio, for export. Portable railway track, 311.
- Greenwood, Miss., to Hastings, Fla. Slack barrel gum staves, 753.
- Greenwood, Miss., to Hopewell, Va. Cotton linters, 54.
- Groton, Conn., from various points via Midway, Conn. Lumber, cement, and steel bars, 704.
- Gypsum, Iowa, to and from points in official classification territory east of Indiana-Illinois state line. Class rates, 343.
- Habana, Cuba, from St. Lamberts, Quebec, Canada, via Key West, Fla. Hay, 289.
- Hamburg, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Hammond, Ind., from Undercliff, N. J., and Port Ivory, Staten Island, N. Y. Copra cake, copra meal, and coconut-oil cake, 363.
- Harrisburg, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Hastings, Fla., from Greenwood, Miss. Slack barrel gum staves, 753.
- Hayden, Ariz., to Galveston, Tex. Smelter products, 723.
- Hayden, Ariz., from Los Angeles, Calif. Grinding balls, 184.
- Healdton, Okla., from Coffeyville, Kans. Petroleum and products, 663.
- Hecla, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Hegewisch, Ill., from north Atlantic ports. Nitrate of soda, 222.
- Helena, Ark., from New York, Pennsylvania, Ohio, Kentucky, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, and Missouri. Class rates, 11.
- Helena, Ark., from St. Louis, Mo., Thebes, Granite City, Peoria, and Chicago, Ill., and Milwaukee, Wis. Class and commodity rates, 11.
- Hellx, Oreg., from Salem, S. Dak., consolidated at Minneapolis, Minn. Oats, 629.
- Hellertown, Pa., from Seaboard, N. J. Coke, 505.
- Hewlett, Va., to Roaring Springs, Pa. Pulp wood, 329.
- Hickory, N. C., from Sulligent, Ala. Lumber, 509.
- Hog Island shipyard (Philadelphia), Pa. Interchange switching and car spotting service, 90.
- Hokendauqua, Pa., from Seaboard, N. J. Coke, 657.
- Hope, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Hopewell, Va., from Carney's Point, N. J. Sulphuric acid, 270.
- Hopewell, Va., from Carolina and southeastern territories. Cotton linters, cottonseed hull shavings, and sulphuric acid, 54.
- Hopewell, Va., from Elkton, Md. Caustic soda, 361.
- Hopewell, Va., from Georgia, Florida, Alabama, North Carolina, and South Carolina. Sulphuric acid, 54 (61).
- Hot Springs, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Houma, La., from Pascola, Mo., and Success, Ark. Gum staves, 471.
- Houston, Tex., to eastern seaboard territory. Clean rice, 189.

- Houston, Tex., to Oklahoma and Louisiana. Iron and steel articles, 390.
- Houston, Tex., from San Francisco and Oakland, Calif., and Seattle, Wash. Copra, 465.
- Huntington, W. Va., to and from eastern cities, trunk line and New England territories. Class and commodity rates, 64.
- Huntington, W. Va., from Ottawa, Millington, Utica, and Wedron, Ill. Glass sand, 259.
- Hurley, N. Mex., from Los Angeles, Calif. Grinding balls, 184.
- Idaho to Minneapolis or Minnesota Transfer, Minn., reconsigned to points east of Chicago, Ill. Lumber, 709.
- Illinois to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Cross-ties, 24.
- Illinois to Helena, Ark. Class rates, 11.
- Illinois from Springfield district, Ill. Coal; divisions and absorptions of switching charges, 274.
- Illinois mines to St. Louis, Mo. Coal, 639.
- Indiana to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Indiana to Helena, Ark. Class rates, 11.
- Indiana from Mississippi. Crossties, 286.
- Indiana mines to St. Louis, Mo. Coal, 639.
- Indiana-Illinois state line, points east of, to and from Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa. Class rates, 343.
- International, Utah, to Chicago district. central freight association, trunk line, and New England territories. Copper, 723.
- Iowa from Chicago switching district, and Shermerville and Dolton, Ill. Brick, 320.
- Iowa to Helena, Ark. Class rates, 11.
- Iowa from Kansas and Missouri. Fruits and vegetables; refrigeration, 426.
- Iowa to and from Nebraska. Fruits and vegetables; refrigeration, 426.
- Iowa from Pennsylvania. Anthracite coal, 739.
- Irvin, Wash., from Los Angeles, Calif. Grinding balls, 184.
- Isanti, Minn., to Albia, Iowa. Potatoes; minimum weight, 385.
- Ivorydale, Ohio, from Los Angeles, Calif. Soya-bean oil, 42.
- Ivorydale, Ohio, from north Atlantic ports. Nitrate of soda, 222.
- Ivorydale, Ohio, from San Francisco and Oakland, Calif., and Seattle, Wash. Copra, 465.
- Jackson, Miss., to Hopewell, Va. Cotton linters, 54 (58).
- Jackson, Miss., from Ohio and Mississippi river crossings, and Chicago, Ill., and related points. Class and commodity rates, 107.
- Jacksonville, Fla., to Arkansas. Fruits and vegetables, 231.
- Jacksonville, Fla., to Birmingham, Ala. Tar, 410.
- Jacksonville, Fla., to Hopewell, Va. Sulphuric acid, 54 (61).
- Jelks, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Jerome, Ariz., from Dawson, N. Mex. Coal, 300.
- Jersey City, N. J. Apples; demurrage, 369.
- Jersey City, N. J., to Rahway and Woodbridge, N. J. Coal ashes and cinders, 632.
- Jonesboro, Ark. Lumber; demurrage, 145.
- Kalo, Iowa, to and from points in official classification territory east of Indiana-Illinois state line. Class rates, 343.
- Kane, Pa. Interchange switching, 244.

- Kansas to Eau Claire, Chippewa Falls, and Menomonie, Wis. Petroleum and products, 152.
- Kansas to Helena, Ark. Class rates, 11.
- Kansas to Iowa and Nebraska. Fruits and vegetables; refrigeration, 426.
- Kansas to Milwaukee and Racine, Wis. Refined petroleum products, 597.
- Kansas from Pennsylvania. Anthracite coal, 739.
- Kansas City, Mo., from Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Kansas City, Mo., to Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Kansas City, Mo., to Lawrence, Kans. Newspapers, 743.
- Kansas City, Mo., from Wheatland, Wyo. Sweet-clover seed, 637.
- Kansas City, Mo.-Kans., to Chicago, Ill. Fuel and refined oil, 197.
- Kell, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Cross-ties, 24.
- Kellogg, Idaho, to points on and east of the Missouri and Mississippi rivers. Pig lead, 723.
- Kensett, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Kentucky to Helena, Ark. Class rates, 11.
- Keokee, Va., to Old Fort, N. C. Bituminous coal, 354.
- Kewaunee, Wis., to and from New York, N. Y., and other points in trunk-line territory. Class and commodity rates, 418.
- Key West, Fla. Hay; demurrage, 289.
- Kinmundy, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Crossties, 24.
- Knoxville, Tenn., to and from Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (117).
- La Manda Park, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- La Salle, Ill., to and from various destinations. Various commodities, 173.
- Lafayette, La., to East St. Louis and Madison, Ill. Old rails, 479.
- Lancaster, Pa. Empty barrels: demurrage, 627.
- Lansing, Mich. Lumber; demurrage, 493.
- Laredo, Tex., to Galveston, Tex. Smelter products, 723.
- Lawrence, Kans., from Kansas City, Mo. Newspapers, 743.
- Lehigh coal region, Pa., to Elizabethport, N. J. Anthracite coal, 381.
- Lehigh coal region, Pa., to Perth Amboy, N. J. Anthracite coal, 375.
- Lewis, Wis., to Pittsburgh, Pa. Potatoes; minimum weight, 385.
- Lewiston, Idaho, to Regina, Saskatchewan. Cherries; express rates, 511.
- Lewiston, Mont., from California. Lemons, 327.
- Lexington, Tex., to Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Lincoln, Nebr., from St. Joseph, Mo. Fruits and vegetables; refrigeration, 426.
- Litchfield, Ill., from St. Louis, Mo. Scrap iron, 298.
- Little Rock, Ark. Lumber; demurrage, 139.
- Little Rock, Ark., from New Orleans, La., Mobile, Ala., and Jacksonville, Fla. Fruits and vegetables; fourth section, 231 (240).
- Lompoc, Calif., to Clarkdale, Ariz. Infusorial earth, 625.
- Loogootee, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Crossties, 24.
- Los Angeles, Calif., to Arizona, Nevada, Montana, Utah, and other points. Grinding balls, 184.
- Los Angeles, Calif., from Bellemont, Ariz., reshipped to Williams, Ariz. Locomotive and tender, 167.

- Los Angeles, Calif., to Ivorydale, Ohio. Soya-bean oil, 42.
- Los Angeles, Calif., from Minnequa, Colo. Iron and steel articles, 253.
- Los Angeles, Calif., from New York, N. Y. Hand fire extinguishers, 143.
- Los Angeles, Calif., to Springfield, Tenn. Class and commodity rates, 337.
- Louisiana from Galveston and Houston, Tex. Iron and steel articles, 390.
- Louisville, Ky., to Jackson and Meridian, Miss. Class and commodity rates, 107.
- Louisville, Ky., to Springfield, Tenn. Class and commodity rates, 337.
- Lowell, Mass., from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- McAlester, Okla., from Menasha and Appleton, Wis. Wrapping paper, 125.
- McGill, Nev., from St. Louis, Mo., originating at Birmingham, Ala. Pig iron, 491.
- Macomb, Ill., from Waterloo, Iowa. Fresh meats and packing-house products, 170.
- Macon, Ga., to Hopewell, Va. Sulphuric acid, 54 (61).
- Madison, Ill., from Lafayette, La. Old rails, 479.
- Madison, Ill., from Steele, Mo. Rails and angle bars, 141.
- Madison, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Magnolia, Ark., from Emerson, Ark., compressed and reshipped to New Hampshire and Massachusetts. Cotton, 486.
- Manitowoc, Wis., to and from New York, N. Y., and other points in trunk line territory. Class and commodity rates, 418.
- Maple Grove, Mass., from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- Marcus Hook, Pa., to Oklahoma City, Okla. Congoleum, 757.
- Marcus Hook, Pa., from Sistersville, W. Va. Gasoline, 48.
- Marinette, Wis., to and from New York, N. Y., and other points in trunk line territory. Class and commodity rates, 418.
- Marion, N. C., from Sulligent, Ala. Lumber, 509.
- Marshalltown, Iowa, to and from points in official classification territory east of Indiana-Illinois state line. Class rates, 343.
- Maryland to anthracite coal region of Pennsylvania. Mine props, 31 (35).
- Maryland to and from North Carolina. Class and commodity rates, 523.
- Maryland to Shenandoah, Pa., and other points in the anthracite coal region. Mine props, 31.
- Massachusetts from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- Massachusetts from Virginia, North Carolina, and South Carolina, reconsigned at Cape Charles, Va. Lumber, 129.
- Melville colliery, Pa., to Elizabethport, N. J. Anthracite coal, 414.
- Memphis, Tenn. Concentration and compression of cotton, 212.
- Memphis, Tenn., from Aberdeen, Miss., diverted to Cairo, Ill., and subsequently diverted to Alton, Ill. Lumber, 623.
- Memphis, Tenn., from Binghamton, N. Y. Medicine, 453.
- Memphis, Tenn., to Birmingham, Ala. Tar, 410.
- Mena, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Menasha, Wis., to McAlester, Okla. Wrapping paper, 125.
- Menominee, Mich., to Muskogee and Tulsa, Okla. Wrapping paper, 125.
- Menominee, Mich., to and from New York, N. Y., and other points in trunk line territory. Class and commodity rates, 418.
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- Menomonie, Wis., from midcontinent oil field, Kans.-Okla. Petroleum and products, 152.
- Meridian, Miss., from Nobel, Ontario. Cotton linters, 283.
- Meridian, Miss., from Ohio and Mississippi river crossings, and Chicago, Ill. and related points. Class and commodity rates, 107.
- Mexico to United States. Copper, lead, and smelter products, 723.
- Miami, Ariz., to Chicago district, central freight association, trunk line, and New England territories. Copper and lead, 723.
- Miami, Ariz., from Crestmore, Calif. Cement, 291.
- Miami, Ariz., to Galveston, Tex. Smelter products, 723.
- Miami, Ariz., from Los Angeles, Calif. Grinding balls, 184.
- Michigan from Chicago, Ill. Berries, fruits, melons, and vegetables; refrigeration, 249.
- Michigan to Helena, Ark. Class rates, 11.
- Michigan from Grand Rapids, Mich. Plaster and gypsum products, 264.
- Michigan City, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Midcontinent oil field, Kans.-Okla., to Eau Claire, Chippewa Falls, and Menomonie, Wis. Petroleum and products, 152.
- Midian, Kans., from Beaumont, Tex. Wrought-iron pipe, 437.
- Midway, Conn., from various points destined to Groton, Conn. Lumber, cement, and steel bars, 704.
- Miles City, Mont., from California. Lemons, 327.
- Millers, Nev., to Blythe Junction, Calif. Second-hand mining machinery, 39.
- Millington, Ill., to Huntington and West Huntington, W. Va. Glass sand, 250.
- Milwaukee, Wis., to Helena, Ark. Class and commodity rates, 11.
- Milwaukee, Wis., from Kansas and Oklahoma. Refined petroleum products, 597.
- Milwaukee, Wis., to Lansing, Mich., originating at Deerbrook, Wis. Lumber, 493.
- Minneapolis, Minn., to Duluth, Minn., and Wisconsin. Berries, fruits, melons, and vegetables; refrigeration, 249.
- Minneapolis, Minn., from Oregon, Washington, Idaho, and Minnesota, reconsigned to points east of Chicago, Ill. Lumber, 709.
- Minneapolis, Minn., from South Dakota, consolidated and forwarded to Portland and Hellx, Oreg., and Tacoma, Wash. Oats, 629.
- Minnequa, Colo., to Seattle, Wash., Portland, Oreg., and San Francisco and Los Angeles, Calif. Iron and steel articles, 253.
- Minnesota from Grand Rapids, Mich. Plaster and gypsum products, 264.
- Minnesota to Helena, Ark. Class rates, 11.
- Minnesota to Minneapolis or Minnesota Transfer, Minn., reconsigned to points east of Chicago, Ill. Lumber, 709.
- Minnesota to official classification territory. Potatoes; minimum weight, 385.
- Minnesota Transfer, Minn., from Oregon, Washington, Idaho, and Minnesota, reconsigned to points east of Chicago, Ill. Lumber, 709.
- Minotola, N. J. Bituminous coal; demurrage, 439.
- Mishawaka, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Mississippi to Hopewell, Va. Cottonseed hull shavings and cotton linters, 54.
- Mississippi to and from North Carolina. Class and commodity rates, 523.
- Mississippi to Ohio and Indiana. Crossties, 286.
- Mississippi to various destinations. Lumber, 698.
- Mississippi River, points on and east of, from Kellogg, Idaho. Pig lead, 723.

- Mississippi River crossings to Meridian and Jackson, Miss. Class and commodity rates, 107.
- Mississippi River crossings to and from Moss Point and Pascagoula, Miss. Class and commodity rates, 112 (117).
- Missouri to Des Moines, Iowa. Walnut logs, 119.
- Missouri to Helena, Ark. Class rates, 11.
- Missouri to Iowa and Nebraska. Fruits and vegetables; refrigeration, 426.
- Missouri from Pennsylvania. Anthracite coal, 739.
- Missouri River, points on and east of, from Kellogg, Idaho. Pig lead, 723.
- Mobile, Ala., from Alabama and Georgia for export. Cotton, 554.
- Mobile, Ala., to Arkansas. Citrus fruits and coconuts, 231.
- Mobile, Ala., from New Orleans, La. Sugar, 605.
- Mobile, Ala., to Rondout, Ill. Blackstrap molasses, 359.
- Monroe, La., from Cairo, Ill. Coarse grain, 227.
- Montana from Los Angeles, Calif. Grinding balls, 184.
- Montgomery, Ala., to Hopewell, Va. Sulphuric acid, 54 (61).
- Montgomery, Ala., from New Orleans, La., and Savannah, Ga. Sugar, 610.
- Morales, Ariz., from Crestmore, Calif. Cement, 291.
- Morenci, Ariz., from Los Angeles, Calif. Grinding balls, 184.
- Morenci, Ariz., to New York, N. Y., Galveston, Tex., and New Orleans, La. Copper bullion, 714.
- Morganton, N. C., from Sulligent, Ala. Lumber, 509.
- Moss Point, Miss., to and from Ohio and Mississippi river crossings, and Chicago, Ill., and related points. Class and commodity rates, 112.
- Mount Vernon, Ohio. Standard time zone, 455.
- Muskogee, Okla., from Green Bay, Brokaw, and Nekoosa, Wis. Toilet and wrapping paper, 125.
- Napanee, Ind., to and from eastern trunk line and New England territories. Class and commodity rates, 215.
- Nashville, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Nashville, Mich., from Silsbee, Tex. Yellow-pine lumber, 165.
- Nashville, Tenn., to Birmingham, Ala. Tar, 410.
- National Stock Yards, Ill., from Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Nebraska to Helena, Ark. Class rates, 11.
- Nebraska to and from Iowa. Fruits and vegetables; refrigeration, 426.
- Nebraska from Kansas and Missouri. Fruits and vegetables; refrigeration, 426.
- Nebraska from Pennsylvania. Anthracite coal, 739.
- Neenah, Wis., to McAlester, Okla. Wrapping paper, 125.
- Nekoosa, Wis., to Muskogee, Okla. Wrapping paper, 125.
- Nevada from Los Angeles, Calif. Grinding balls, 184.
- New England to and from North Carolina. Class and commodity rates, 523.
- New England to Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (118).
- New England territory to and from Huntington, W. Va. Class and commodity rates, 64.
- New England territory from Northport, Wash., International, Utah, Miami, Ariz., and Anaconda and Black Eagle, Mont. Copper, zinc, lead, and lead bullion, 723.
- New England territory to and from Portsmouth, Ohio. Class and commodity rates, 78.
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- New England territory to and from South Bend and other Indiana points. Class and commodity rates, 215.
- New Hampshire from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- New Jersey to and from North Carolina. Class and commodity rates, 523.
- New Jersey from North Carolina and South Carolina, reconsigned at Cape Charles, Va. Lumber, 281.
- New Orleans, La., from Arizona. Copper bullion, 714.
- New Orleans, La., to Arkansas Citrus fruits and coconuts, 231.
- New Orleans, La., to Birmingham, Ala. Creosote oil and tar, 410.
- New Orleans, La., to Mobile, Ala. Sugar, 605.
- New Orleans, La., to Montgomery, Ala. Sugar, 610.
- New Orleans, La., to Violet, Phoenix, and Pointe-a-la-Hache, La. Cypress lumber, 489.
- New York to Helena, Ark. Class rates, 11.
- New York to and from North Carolina. Class and commodity rates, 523.
- New York from North Carolina and South Carolina, reconsigned at Cape Charles, Va. Lumber, 281.
- New York, N. Y. Lumber; demurrage, 272.
- New York, N. Y. Waste paper stock; loading, 686.
- New York, N. Y., from Arizona. Copper bullion, 714.
- New York, N. Y., to and from Cadillac, Mich. Class and commodity rates, fourth section, 418.
- New York, N. Y., from Cleveland, Ohio, for export. Portable railway track, 311.
- New York, N. Y., to Hegewisch, Ill., and Ivorydale and Willow, Ohio. Nitrate of soda, 222.
- New York, N. Y., to and from Huntington, W. Va. Class and commodity rates, 64.
- New York, N. Y., to and from Menominee, Mich., and Marinette, Kewaunee, and Manitowoc, Wis. Class and commodity rates, 418.
- New York, N. Y., to Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (118).
- New York, N. Y., to Seattle, Wash., and Los Angeles, Calif. Hand fire extinguishers, 143.
- New York, N. Y., to and from South Bend and other Indiana points. Class and commodity rates, 215.
- New York, N. Y., from Springfield, Tenn. Class and commodity rates, 337.
- New York harbor. Chestnut lumber; demurrage and towage charges, 450.
- New York Mills, Minn., to Omaha, Nebr. Pickles in brine, 294.
- Newberry, S. C., to Hopewell, Va. Cotton linters, 54 (58).
- Newport, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Nobel, Ontario, to Meridian, Miss. Cotton linters, 283.
- Nogales, Ariz., from Crestmore, Calif. Cement, 291.
- Norfolk, Va., to and from Huntington, W. Va. Class and commodity rates, 64.
- North Atlantic ports to Hegewisch, Ill., and Ivorydale and Willow, Ohio. Nitrate of soda, 222.
- North Baton Rouge, La., from Electra, Tex. Liquefied petroleum gas, 137.
- North Baton Rouge, La., from Oklahoma. Liquefied petroleum gas, 133.
- North Carolina to Cape Charles, Va., reconsigned to Massachusetts, Connecticut, and Rhode Island. Lumber, 129.
- North Carolina to Cape Charles, Va., reconsigned to New York and New Jersey. Lumber, 281.

- North Carolina to Hopewell, Va. Cottonseed hull shavings and sulphuric acid, 54.
- North Carolina to and from South Carolina, Georgia, Florida, Alabama, Mississippi, New England, New York, Pennsylvania, New Jersey, Maryland, and Delaware. Class and commodity rates, 523.
- North Tonawanda, N. Y. Pig iron, steel products and ferromanganese; car spotting, 745.
- Northport, Wash., to Chicago district, central freight association, trunk line, and New England territories. Lead and lead bullion, 723.
- Nutley, N. J., from Cleveland, Ohio. Barrels, 423.
- Oakland, Calif., from Detroit, Mich. Baking and drying ovens, 149.
- Oakland, Calif., to Ivorydale, Ohio, Houston and Dallas, Tex., and Port Ivory, Staten Island, N. Y. Copra, 465.
- Official classification territory. Centrifugal cream separators; rating, 668.
- Official classification territory. Sheet-metal building work; rating, 52.
- Official classification territory. Scrap leather; rating, 481.
- Official classification territory. Sulphuric acid and chloride of zinc; return transportation of unloaded portions, 201.
- Official classification territory to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
- Official classification territory to and from Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa. Class rates, 343.
- Official classification territory from Minnesota. Potatoes; minimum weight, 385.
- Ogemaw, Ark., to Jonesboro, Ark., reconsigned to Coffeyville, Kans. Lumber, 145.
- Oglesby, Ill., to and from Cedar Point, Ill. Passenger fares, 367.
- Ohio to Helena, Ark. Class rates, 11.
- Ohio from Mississippi. Crossties, 286.
- Ohio River crossings to Meridian and Jackson, Miss. Class and commodity rates, 107.
- Ohio River crossings to and from Pascagoula and Moss Point, Miss. Class and commodity rates, 112 (117).
- Okanogan, Wash., from Evans, Wash., via Canada. Lime, 324.
- Oklahoma from Deepwater, Mo. Sewer segment blocks and hollow building tile, 459.
- Oklahoma to Eau Claire, Chippewa Falls, and Menomonie, Wis. Petroleum and products, 152.
- Oklahoma from Galveston and Houston, Tex. Iron and steel articles, 390.
- Oklahoma to Milwaukee and Racine, Wis. Refined petroleum products, 597.
- Oklahoma to North Baton Rouge, La. Liquefied petroleum gas, 133.
- Oklahoma from Wisconsin and Menominee, Mich. Toilet and wrapping paper, 125.
- Oklahoma City, Okla., from Burkburnett, Tex. Crude petroleum, 22.
- Oklahoma City, Okla., from Camp Pike and Carbell Spur, Ark. Hogs, 474.
- Oklahoma City, Okla., from Marcus Hook, Pa. Congoleum, 757.
- Oklahoma, Panhandle of. Standard time zone, 455.
- Old Fort, N. C., from Virginia mines. Bituminous coal, 354.
- Omaha, Nebr., from Council Bluffs, Iowa. Fruits and vegetables; refrigeration, 426.
- Omaha, Nebr., from New York Mills, Minn. Pickles in brine, 294.
- Orange, Tex., to eastern seaboard territory. Clean rice, 189.
- Oregon to Minneapolis or Minnesota Transfer, Minn., reconsigned to points east of Chicago, Ill. Lumber, 709.

- Osceola, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Ottawa, Ill., to Huntington and West Huntington, W. Va. Glass sand, 259.
- Owosso, Mich., from Texla, Tex. Lumber, 503.
- Pacific coast from Minnequa, Ohio. Iron and steel articles, 253.
- Pacific coast ports from Chicago, Ill., and Terre Haute and Vincennes, Ind., for export to the Orient. Iron and steel articles, 339.
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- Pascagoula, Miss., to and from Ohio and Mississippi river crossings, and Chicago, Ill., and related points. Class and commodity rates, 112.
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- Pelham, Ga., to Hopewell, Va. Sulphuric acid, 54 (61).
- Pennsylvania to Helena, Ark. Class rates, 11.
- Pennsylvania to Iowa, Kansas, Missouri, and Nebraska. Anthracite coal, 739.
- Pennsylvania to and from North Carolina. Class and commodity rates, 523.
- Pennsylvania mines to Carney's Point, N. J., diverted at Enola, Pa. Bituminous coal, 461.
- Pennsylvania mines from eastern shore territory of Virginia, Delaware, and Maryland. Mine props, 31 (35).
- Pennsylvania mines to Elizabethport, N. J. Anthracite coal, 381, 414.
- Pennsylvania mines to Elizabethport and Port Johnston, for reshipment. Anthracite coal, 432.
- Pensacola, Fla., to Birmingham, Ala. Tar, 410.
- Pensacola, Fla., to Hopewell, Va. Sulphuric acid, 54 (61).
- Peoria, Ill., to Helena, Ark. Class and commodity rates, 11.
- Peoria, Ill., to Springfield, Tenn. Class and commodity rates, 337.
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- Perth Amboy, N. J., to Rahway, N. J. Coal ashes and cinders, 632.
- Philadelphia, Pa., to Clarkdale, Ariz. Wrought steel pipe, bolts, packing. Iron steam separators, fittings, and gauges, 483.
- Philadelphia, Pa., to Detroit and Flint, Mich. Electric storage batteries, 131.
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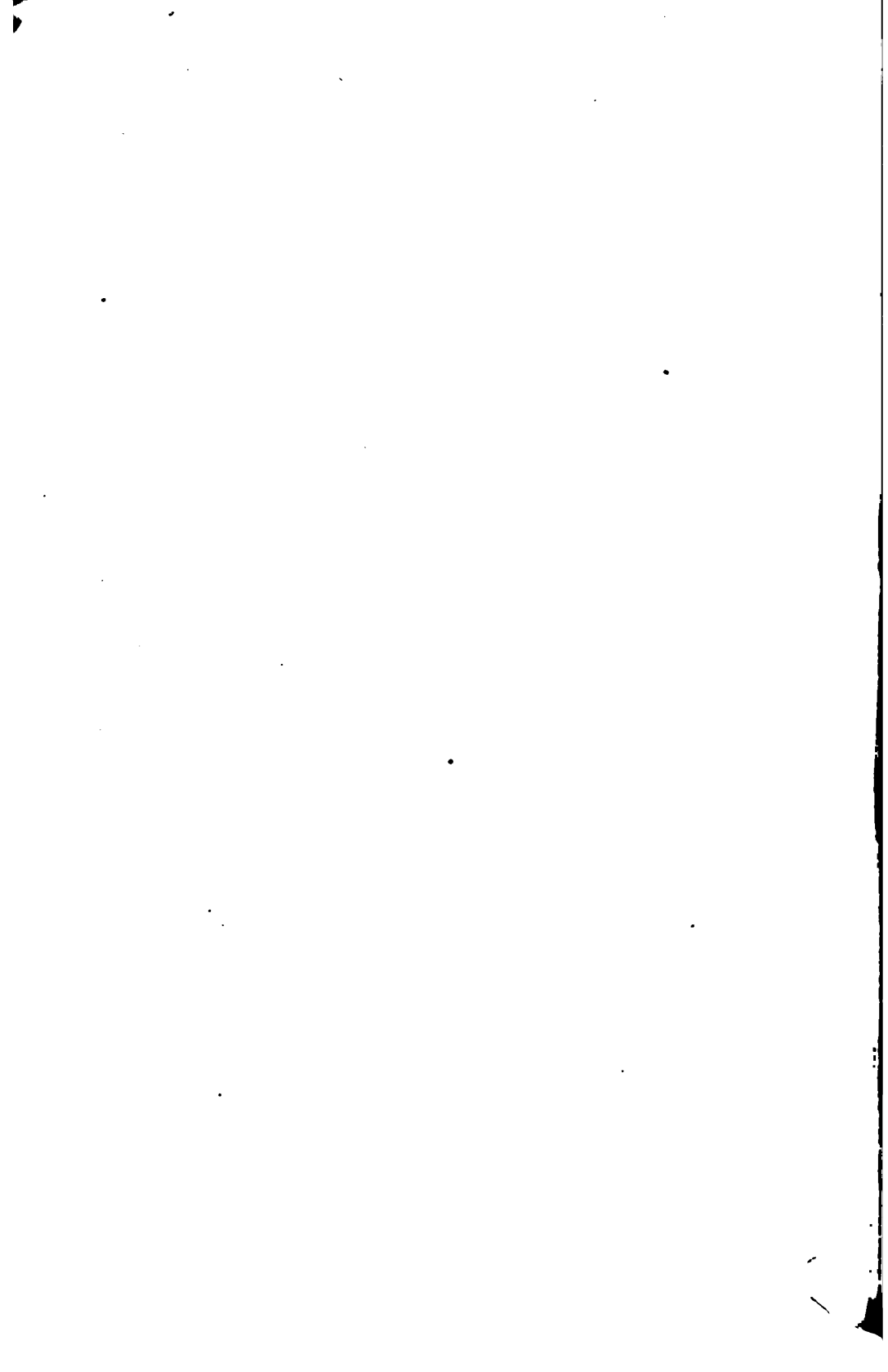
- Port Johnston, N. J., from Red Ash colliery, Pa., for reshipment. Anthracite coal, 432.
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- Portland, Oreg., from South Dakota, consolidated at Minneapolis, Minn. Oats, 629.
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- Rahway, N. J., from Jersey City and Perth Amboy, N. J. Coal ashes and cinders, 632.
- Red Ash colliery, Pa., to Elizabethport and Port Johnston, N. J., for reshipment. Anthracite coal, 432.
- Red Rock, Ariz., from Crestmore, Calif. Cement, 291.
- Regina, Saskatchewan, Canada, from Lewiston, Idaho, and Union, Oreg. Cherries; express rates, 511.
- Rhode Island from Virginia, North Carolina, and South Carolina, reconsigned at Cape Charles, Va. Lumber, 129.
- Roaring Spring, Pa., from Virginia. Pulp wood, 329.
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- Rogers, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
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- Rushville, Ind., from Dupon, Ill., originating at Derry, La. Yellow-pine lumber, 635.
- Rutherford, Pa., from West Virginia mines, diverted to Coatesville, Pa. Bituminous coal, 621.
- St. Clair, Mich., to Springfield, Tenn. Class and commodity rates, 337.
- St. Elmo, Ill., to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting. Crossties, 24.
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- St. Louis, Mo., to Helena, Ark. Class and commodity rates, 11.
- St. Louis, Mo., from Illinois and Indiana mines. Coal, 639.
- St. Louis, Mo., to Litchfield, Ill. Scrap iron, 298.
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- St. Louis, Mo., to Springfield, Tenn. Class and commodity rates, 337.
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- Salem, S. Dak., to Portland and Hellix, Oreg., and Tacoma, Wash., consolidated at Minneapolis, Minn. Oats, 629.
- San Antonio, Tex., from Witcher, Worley, and Vogle, Tex. Lignite, 45.
- San Francisco, Calif., to Ivorydale, Ohio, Houston and Dallas, Tex., and Port Ivory, Staten Island, N. Y. Copra, 465.
- San Francisco, Calif., from Minnequa, Colo. Iron and steel articles, 253.
- San Francisco, Calif., to Springfield, Tenn. Class and commodity rates, 337.
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- Savannah, Ga., to Birmingham, Ala. Tar, 410.
- Savannah, Ga., to Groton, Conn., via Midway, Conn. Lumber, 704.
- Savannah, Ga., to Hopewell, Va. Sulphuric acid, 54 (61).
- Savannah, Ga., to Montgomery, Ala. Sugar, 610.
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- Seattle, Wash., from Minnequa, Colo. Iron and steel articles, 253.
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- Shafter, Nev., from Los Angeles, Calif. Grinding balls, 184.
- Shawano, Wis., to Tulsa, Okla. Wrapping paper, 125.
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- Shermerville, Ill., to Iowa. Brick, 320.
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- Silsbee, Tex., to Nashville, Mich. Yellow-pine lumber, 165.
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- South Carolina from Apalachia and Dante districts, Va. Bituminous coal, 584.
- South Carolina to Cape Charles, Va., reconsigned to New York and New Jersey. Lumber, 281.
- South Carolina to Cape Charles, Va., reconsigned to Rhode Island, Massachusetts, and Connecticut. Lumber, 129.
- South Carolina to Hopewell, Va. Sulphuric acid, 54 (61).
- South Carolina to and from North Carolina. Class and commodity rates, 523.
- South Dakota to Portland and Helix, Oreg., and Tacoma, Wash., consolidated at Minneapolis, Minn. Oats, 629.
- South Dakota from Sioux City, Iowa. Concrete drain tile and concrete products, 303.
- Southern classification territory. Sulphuric acid and chloride of zinc; return transportation of unloaded portions, 201.
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- Southeastern territory to Hopewell, Va. Cotton linters, cottonseed hull shavings, and sulphuric acid, 54.
- Southern classification territory. Centrifugal cream separators; rating, 668.
- Spartanburg, S. C., from Apalachia and Dante districts, Va. Bituminous coal, 584.
- Springfield, Tenn., from various points. Class and commodity rates, 337.

- Springfield district, Ill., to Illinois and various interstate destinations. Coal, divisions and absorption of switching charges, 274.
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- Stonega, Va., to Old Fort, N. C. Bituminous coal, 354.
- Success, Ark., to Houma, La. Gum staves, 471.
- Suffolk, Va., to El Paso, Tex. Peanuts, 520.
- Sugar City, Idaho, to Pine Bluff, Ark. Refuse molasses, 179.
- Sulligent, Ala., to Marion, Drexel, Morganton, Hickory, and Statesville, N. C. Lumber, 509.
- Suncook, N. H., from Emerson, Ark., compressed and reshipped at Magnolia, Ark. Cotton, 486.
- Tacoma, Wash., from Bruce and Salem, S. Dak., consolidated at Minneapolis, Minn. Oats, 629.
- Tennessee to Hopewell, Va. Cottonseed hull shavings and cotton linters, 54.
- Terre Haute, Ind. Stoppage at, for creosoting of crossties shipped from points in Illinois to Chicago, Ill., 24.
- Terre Haute, Ind., from Center City, Minn. Potatoes; minimum weight, 385.
- Terre Haute, Ind., from Chicago and Burr Oak, Ill. Scrap iron, 547.
- Terre Haute, Ind., to Chicago, Ill., switching district. Salted meats and packing-house products, 691.
- Terre Haute, Ind., to Pacific coast ports for export to the Orient. Iron and steel articles, 339.
- Terre Haute, Ind., to Rockwood, Tenn. Mill cinder, 549.
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- Texla, Tex., to Owosso, Mich. Lumber, 503.
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- Troy, Ill. Allowances to short line, 371.
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- Trunk line territory from Northport, Wash., International, Utah, Miami, Ariz., and Anaconda and Black Eagle, Mont. Copper, zinc, lead and lead bullion, 723.
- Trunk line territory to and from Portsmouth, Ohio. Class and commodity rates, 78.
- Tucson, Ariz., from Crestmore, Calif. Cement, 291.
- Tulsa, Okla., from Shawano, Wis., and Menominee, Mich. Wrapping paper, 125.
- Tyler, Va., to Roaring Springs, Pa. Pulp wood, 329.
- Undercliff, N. J., to Hammond, Ind. Copra cake, copra meal, and coconut oil cake, 363.
- Undercliff (formerly Edgewater), N. J. Anthracite coal, 434.
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- United States from Mexico. Copper, lead, and smelter products, 723.
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- Utah from Los Angeles, Calif. Grinding balls, 184.
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- Verdon, Va., to Roaring Spring, Pa. Pulp wood, 329.
- Vincennes, Ind., to Pacific coast ports for export to the Orient. Iron and steel articles, 339.
- Violet, La., from New Orleans, La. Cypress lumber, 489.
- Virginia to anthracite coal region of Pennsylvania. Mine props, 31 (35).
- Virginia to Cape Charles, Va., reconsigned to Massachusetts, Connecticut, and Rhode Island. Lumber, 129.
- Virginia to Roaring Spring, Pa. Pulp wood, 329.
- Virginia to Shenandoah, Pa., and other points in the anthracite coal region. Mine props, 31.
- Virginia mines to Old Fort, N. C. Bituminous coal, 354.
- Virginia mines to Spartanburg and other South Carolina points. Bituminous coal, 584.
- Vogle, Tex., to San Antonio and Cementville, Tex. Lignite, 45.
- Wallace, Idaho, from Los Angeles, Calif. Grinding balls, 184.
- Warren, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
- Washington to Minneapolis or Minnesota Transfer, Minn., reconsigned to points east of Chicago, Ill. Lumber, 709.
- Waterloo, Iowa, to Macomb and Galesburg, Ill. Fresh meats and packing-house products, 170.
- Watertown, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
- Wathena, Kans., to Grand Island, Nebr. Fruits and vegetables; refrigeration, 426.
- Wathkins, Okla., to North Baton Rouge, La. Liquefied petroleum gas, 133.
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- West Huntington, W. Va., from Ottawa, Millington, Utica, and Wedron, Ill. Glass sand, 259.
- West Monroe, La., from Cairo, Ill. Coarse grain, 227.
- West Virginia mines to Coatesville, Pa., diverted at Rutherford, Pa. Bituminous coal, 621.
- Western classification territory. Centrifugal cream separators; rating, 668.
- Western classification territory. Sulphuric acid and chloride of zinc; return transportation of unloaded portions, 201.
- Western classification territory to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
- Western trunk line territory. Fruits, berries, melons, and vegetables; refrigeration, 249.
- Wheatland, Wyo., to Kansas City, Mo. Sweet clover seed, 637.
- Whittier, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- Whittier Groves, Calif., to Lewiston, Miles City, and Glendive, Mont. Lemons, 327.
- Willcox, Ariz., from Crestmore, Calif. Cement, 291.
- Williams, Ariz., from Los Angeles, Calif., originating at Bellemont, Ariz. Locomotive and tender, 167.

- Willow, Ohio, from north Atlantic ports. Nitrate of soda, 222.
Wilmington, N. C., to Charleston, S. C. Pyrites cinders, 551.
Wilmington, N. C., to Hopewell, Va. Sulphuric acid, 54 (61).
Winston-Salem, N. C., to Hopewell, Va. Sulphuric acid, 54 (61).
Wisconsin from Chicago, Ill., and St. Paul and Minneapolis, Minn. Berries, fruits, melons, and vegetables; refrigeration, 249.
Wisconsin to Helena, Ark. Class rates, 11.
Wisconsin to Muskogee, Tulsa, and McAlester, Okla. Toilet and wrapping paper, 125.
Wisconsin from Grand Rapids, Mich. Plaster and gypsum products, 264.
Witcher, Tex., to San Antonio and Cementville, Tex. Lignite, 45.
Woodbridge, N. J., from Jersey City, N. J. Coal ashes and cinders, 632.
Woonsocket, S. Dak., from Sioux City, Iowa. Concrete drain tile, 303.
Wooster, Ohio, to Atlanta, Ga., and other points in southern classification territory. Rubber tires and tubes, 206.
Worley, Tex., to San Antonio and Cementville, Tex. Lignite, 45.
Wynne, Ark., from New Orleans, La., and Mobile, Ala. Citrus fruits and coconuts, 231.
Wyoming coal district, Pa., to Elizabethport, N. J. Anthracite coal, 414.
Wyoming region, Pa., to Elizabethport and Port Johnson, N. J., for reshipment. Anthracite coal, 432.
Youngstown, Ohio, to Groton, Conn., via Midway, Conn. Steel bars, 704.
Yuma, Ariz., from Crestmore, Calif. Cement, 291.
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INDEX DIGEST.

[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

ABSORPTION. *See also* SWITCHING.

Following *Industrial Railways Case*, 29 I. C. C., 212, absorption of charges of the La Salle & Bureau County R. R., on traffic to and from complainant's plant cancelled. Following second report, 32 I. C. C., 129, absorption restored. *Held*: Rates unreasonable and unduly prejudicial during interim to extent they exceeded charges in addition to line-haul rates. Reparation awarded. *Matthiessen & Hegeler Zinc Co. v. C., B. & Q. R. R. Co.*, 173.

Owing to the short haul on coal from mines in Illinois and Indiana, the volume of the rate to East St. Louis, Ill., held to be insufficient, without an undue depletion of line-haul revenues, to require the absorption of the differential of 20 cents to St. Louis, Mo., which is the charge of the Terminal R. R. Asso. of St. Louis for the transfer across its Mississippi River bridges and ferries and its delivery in St. Louis. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (647).

Refusal of defendants to increase the amount of their absorption of complainant's switching charges on shipments between points on complainant's line and points of interchange with defendants' lines, not found unlawful as the amount complainant would secure for its switching service would still remain the same and it would not be benefited thereby, whereas consignees and shippers would pay less and the trunk lines more. *Cuyahoga Valley Ry. Co. v. Director General*, 660.

ACTUAL WEIGHT. *See* WEIGHT.

ADDITIONAL SERVICE.

A carrier is entitled to reasonable compensation for each service rendered. For services that it may render or procure to be rendered off its own line or outside the mere matter of transportation over its line, it may charge and receive compensation. *Anaconda Copper Mining Co. v. Director General*, 723 (738).

ADJACENT FOREIGN COUNTRY. *See also* FOREIGN COUNTRY.

Shipment tendered unrounted and moved by way of Canada, although lower rate applied over available intrastate route. *Held*: Shipment misrouted and reparation awarded. *Woodbury Lumber Co. v. Director General*, 324.

ADJUSTMENT OF RATES. *See also* RELATIVE ADJUSTMENT.

Impossible under the present system of rate making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in common markets. *Fort Dodge Commercial Club v. Director General*, 343 (345).

Upon further hearing original report, 32 I. C. C., 272, modified and adjustment of rates on cotton from various points in Alabama and Georgia to Mobile, Ala., and Savannah, Ga., for export, found unduly prejudicial to Mobile and unduly preferential of Savannah in some instances and not in others. Reasonable relationship prescribed. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 554.

ADJUSTMENT OF RATES—Continued.

Fourth and fifth class rates on salted meats, in bulk, and packing-house products, from Terre Haute, Ind., to Chicago, Ill., found not unreasonable, but adjustment of rates from Terre Haute and St. Louis, Mo., to Chicago, found unduly prejudicial to complainant at Terre Haute in so far as the rates exceeded those from St. Louis. Reparation denied. *Home Packing & Ice Co. v. Director General*, 691.

In any blanket adjustment of rates, embracing points widely separated and from and to which varying rates have applied, it is impossible to observe a uniform percentage increase. *Phelps Dodge Corp. v. Director General*, 714 (716).

ADMINISTRATIVE QUESTION.

Following *Northern Pacific Ry. Co. v. Solum*, 247 U. S., 477, the reasonableness of a particular routing of traffic as between two routes, one interstate and one intrastate, is an administrative question whose determination is within the Commission's jurisdiction. *Woodbury Lumber Co. v. Director General*, 324 (325).

ADMINISTRATIVE RULING.

Conference Rulings 50, 70, and 104, cited. *Highland Iron & Steel Co. v. Director General*, as Agent, 547 (548).

Conference Ruling No. 59, quoted. *Schuetz & Co. v. Director General*, 709 (711).

Conference Rulings 299 (c) and 304 (a) cited. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (210).

Rule 5 (b) of Tariff Circular 18-A, cited. *American Agricultural Chemical Co. v. H. & B. V. Ry. Co.*, 177.

Rule 5 (b) of Tariff Circular 18-A is one of tariff interpretation. It may be published in the tariff, but its terms must be observed in interpreting or applying all tariffs whether or not it is so published. Its application is not limited to proportional rates. *Id.* (178).

Rule 7 of Tariff Circular 18-A, quoted. *Lakewood Engineering Co. v. Director General*, 311 (313).

Rule 66 of Tariff Circular 18-A, cited. *Northern Potato Traffic Asso. v. C., B. & Q. R. R. Co.*, 385 (388).

Rule 77 of Tariff Circular 18-A, cited. *Grand Rapids Plaster Co. v. Director General*, 264 (269); *Du Pont de Nemours & Co. v. Director General*, 461 (462); *Phelps Dodge Corp. v. Director General*, 714 (722).

ADVANCE IN RATES. *See also* DOUBLE INCREASE.

In General:

The percentage of an increase is not controlling if the resulting rates are not unreasonable. *Calumet & Arizona Mining Co. v. Director General*, 332 (336).

Fact that certain shipments may have moved at rates which were subsequently increased can not be considered as mitigating damages due to the collection of unreasonable rates upon other shipments of the same or different commodities. The right of a shipper to recover damages accrues when he pays an unreasonable rate and the law does not inquire into later events. *Meeker & Co. v. C. R. R. Co. of N. J.*, 414 (416).

Coal: Successively increased rates on bituminous coal from Coal Creek, Tenn., to Canton, N. C., not found unreasonable or disproportionate as compared with increases at competitive points, less distant from their coal supply than complainant. *Champion Fibre Co. v. Director General*, 349.

ADVANCE IN RATES—Continued.

Logs, walnut: After expiration of order in *Wheeler Lumber, Bridge & Supply Co.*, 23 I. C. C., 514, rates formerly in effect on lumber from Kansas City, Mo., to Des Moines, Iowa, restored. Rates on walnut logs from northern Missouri points to Des Moines simultaneously increased to the level of lumber rates not found unreasonable or otherwise unlawful. *Railroad Commissioners of Iowa v. Q., O. & K. C. R. R. Co.*, 119.

Lumber, cypress: Rate on, increased 1 cent following *Fifteen Per Cent Case*, 45 I. C. C., 303, but order in that case did not authorize any increase and joint rate subsequently reduced 1 cent. Reparation awarded on basis of rate subsequently established. *Pine Plume Lumber Co. v. Director General*, as Agent, 501.

Mine props: Rates on, from eastern shore territory of Maryland, Virginia, and Delaware to points in Pennsylvania, increased following *Five Per Cent Case*, 32 I. C. C., 325, found unreasonable to extent they exceeded rates prescribed in *Virginia Pine Timber Co.*, 52 I. C. C., 249. Reparation awarded. *Bowden Co. v. Director General*, 31; *Armstrong v. N. Y., P. & N. R. R. Co.*, 35.

Newspapers: Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for proposed increased rates on newspapers transported in passenger cars between stations on the Kansas City, Kaw Valley & Western Ry., Kansas City, Mo., to Lawrence, Kans., inclusive. *Newspapers on Passenger Cars*, 743.

State rates: State rates on copper ore and on lime rock, increased under General Order No. 28 specified amounts per ton, aggregating increases in excess of 25 per cent not found unreasonable or otherwise unlawful. *Calumet & Arizona Mining Co. v. Director General*, 332.

ADVANTAGES AND DISADVANTAGES. *See also* LOCATION.

The Commission may not require carriers to equalize natural advantages, such as location, cost of production, and the like. *Colorado Fuel & Iron Co. v. Director General*, 253 (255).

Commercial, are not factors that can have any great consideration in reaching conclusions as to the propriety of rate structures. *Anaconda Copper Mining Co. v. Director General*, 723 (732).

AGENT.

Following *Este Co.*, 34 I. C. C., 469, and *Trexler Lumber Co.*, 49 I. C. C., 121, demurrage charges unlawfully collected on shipments specifically routed but held at a point short of billed destination by carrier's agent, who failed to turn the shipments over to the delivering carrier as specified in bill of lading. *Texas Co. v. Director General*, 48.

Erroneous information given by carrier's agent affords no basis for relief from the Commission in support of a claim against the carrier. *Cleveland Cooperage Co. v. Director General*, 423 (425).

Nature and extent of delivery of c. l. traffic has differentiated with the increasing complexity in the development of industrial enterprises, to which trunk-line carriers may be required to perform services of delivery without charge in addition to the transportation rate; or, if it choose, employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (681-682).

AGGREGATE OF INTERMEDIATE RATES. *See* THROUGH AND LOCAL AGREEMENT. *See* CONTRACT.
ALLOWANCES.

Request for order compelling defendants to render spotting service at Hog Island shipyard, without charge in addition to line-haul rates, or to make allowance therefor, denied, as changed conditions no longer require defendants to provide such service, which would constitute a reduction in the line-haul rates which have not been proven unreasonable. *American International Shipbuilding Corp. v. P. R. R. Co.*, 90.

Switching and spotting service performed by defendants for industries in the Birmingham district without charge not shown unduly prejudicial to complainant, who performs its own service within its plant at Bessemer, Ala., with its own power, and for which no allowances are made. Services accorded the alleged preferred industries are dissimilar to those performed by complainant, which services defendants should not be required to render or for which allowances should be paid. *United States Cast Iron Pipe & Foundry Co. (Inc.) v. Director General*, 442.

On complaint that allowance for spotting cars within complainant's plant at Burlington, N. J., is inadequate, *Held*: Without passing upon the Commission's power to order an increased allowance, complainant has not demonstrated the propriety of an increased allowance for the spotting service in question. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677.

Nature and extent of delivery of c. l. traffic has differentiated with the increasing complexity in the development of industrial enterprises, to which trunk-line carriers may be required to perform services of delivery without charge in addition to the transportation rate; or, if it choose, employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable. *Id.* (681-682).

To comply with the legal obligation of delivery, a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. *Id.* (683).

Switching allowances to large industries in many instances are little better than undue preferences, and represent service which the Commission would *ab initio* long hesitate to direct a carrier to render in effecting delivery. They are frequently compelled by the fear of loss of large tonnage, deplete unnecessarily the revenues of carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients to other shippers who receive only average delivery service. *Id.* (684).

Cost to complainant of moving cars between interchange or spur track, just within the plant, and places of unloading or loading, found to exceed the allowance paid to it by defendant. *Id.* (685).

ALLOWANCES—Continued.

Service of loading waste paper stock, provided for in tariffs, was not rendered due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. *Held*: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload, outweighed expense of loading with their own employees, for which service there was no obligation on part of carriers to make an allowance. *Waste Merchants Asso. v. Director General*, 686.

No alternate clause in tariffs provided for payment of allowance if shippers performed loading service, and since all allowances must be published in tariffs, even if defendants desired, they could not lawfully have compensated complainants for loading service rendered by them. *Id.* (689).

Nothing in the act requires that a shipper must be reimbursed for transportation service that he may elect to perform primarily for his own convenience. *Id.* (689).

Section 15 of the act, intended to provide against excessive allowances, quoted. *Id.* (689-690).

Practice of defendants in refusing to spot cars at complainant's plant in the Buffalo rate district or to make allowances to complainant for performing the service, while performing spotting service or making allowances to complainant's competitors in the same rate district, found to result in undue prejudice. Reparation denied. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745.

AMENDMENT TO COMPLAINT.

Findings in supplemental report, 37 I. C. C., 345, denying reparation on shipments on which complainant failed to establish that they bore the transportation charges, reaffirmed. New parties who paid and bore the freight charges found barred as they were not joined as parties complainant within the statutory period. *Oden & Elliott v. S. A. L. Ry.*, 698.

ANALOGOUS ARTICLES. See COMPARATIVE RATES.**ANY-QUANTITY RATES.**

First class any-quantity rate on chemical fire extinguishers, hand, other than wheeled, not found unreasonable as compared with third class c. l. rate on hand fire engines, other than chemical. *Pyrene Mfg. Co. v. Director General*, 143.

APPLICATION.

Section 5. The ownership by the U. S. Steel Corporation of the stock of both the U. S. Steel Products Co., and the several applicant rail carriers, held to constitute an interest within the meaning of section 5 of the act by rail lines in water lines owned and operated by the Products Company. Application of United States Steel Products Co., 513 (515).

ARBITRARY. See also DIFFERENTIAL.

Combination rate legally applicable on infusorial earth from Lompoc, Calif., to Clarkdale, Ariz., exceeded lower commodity rate in effect via route of movement to Cedar Glade, Ariz., plus an arbitrary of 5 cents to destination. Reparation awarded and reasonable maximum rate prescribed. *United Verde Extension Mining Co. v. Director General*, 625.

ASSIGNED CARS. *See also* CAR DISTRIBUTION.

Report of Commission to Senate Resolution No. 376, relative to order of April 15, 1920, entitled "Notice to carriers and shippers." Assignment of Freight Cars, 760.

The rule of law as to distribution of cars in accordance with the relative ratings of the mines as set forth in the *Traer Case*, 13 I. C. C., 451, and sustained by the Supreme Court in 215 U. S., 452 and 479, remained the controlling rule until during the war and under the rules of the Fuel Administration, when the use of assigned cars was abandoned, followed by the imperative necessity of railroads confiscating coal in transit in order to keep their roads in operation. Id. (763).

Coal operators are not able to entirely agree among themselves as to the advantages or disadvantages of assigned car practice. Id. (766).

Notice to carriers and shippers issued by the Commission on April 15, 1920, recommending continuance in effect of Railroad Administration's Car Service Section Circular CS-31 (Revised) modified in accordance with decisions of the Commission in *Hocking Valley Case*, 12 I. C. C., 398, and *Traer Case*, 13 I. C. C., 451. Appendix 2. Id. (771).

ASSIGNMENTS.

Purchase price based on freight rate under agreement with consignors that one-half of any excess over and above such rate would be borne by consignors. Charges were paid and borne by complainant and one-half of excess charged back to consignors. Reparation awarded complainant who introduced in evidence assignments from consignors of their claims for reparation. *Bare Paper Co. v. Director General*, as Agent, 329 (331).

BACK HAUL.

On traffic originating at points west of Groton, Conn., for delivery to complainant's plant at that point, rule required that shipments be billed to Midway, Conn., for delivery via ferry extension, necessitating a back haul from Midway to Groton. *Held*: Charges assessed in so far as they exceed by more than \$3 per car the charges on like traffic delivered in Groton proper, found unduly prejudicial. *Groton Iron Works v. N. Y., N. H. & H. R. R. Co.*, 704.

BILL OF LADING.

Contained instructions as to party to be notified at reconsignment point together with notation "to be reconsigned to Lansing," but did not name party to whom notice should be sent at the latter point. Carrier reconsigned the shipment to ultimate destination where demurrage accrued. *Held*: Carrier at fault in accepting and moving the shipment under ambiguous instructions contained in the bill of lading and demurrage charges illegally assessed. Reparation awarded. *Gill-Andrews Lumber Co. v. Director General*, 493.

It is the duty of a carrier to issue a bill of lading free from ambiguity or uncertainty. Id. (494).

BILLING.

Complainant loaded first car to visible capacity and forwarded shipments under separate bills of lading, but failed, through oversight, to comply with tariff requirements or make cross reference to the separate shipments in the actual billing which would indicate that commodities were offered as a single shipment. *Held*: Follow-lot rule not applicable and charges legally applicable not found unreasonable. *United Verde Extension Mining Co. v. Director General*, 483.

BLANKET RATES. *See also* GROUP RATES.

In any blanket adjustment of rates, embracing points widely separated and from and to which varying rates have applied, it is impossible to observe a uniform percentage increase. *Phelps Dodge Corp. v. Director General*, 714 (716).

In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. *Id.* (720).

BOAT LINES.

The ownership by the U. S. Steel Corporation of the stock of both the U. S. Steel Products Co., and the several applicant rail carriers, held to constitute an interest within the meaning of section 5 of the act by rail lines in water lines owned and operated by the Products Company. Application of *United States Steel Products Co.*, 513 (515).

Section 5 of the act charges the Commission only with the duty of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this weight must be given to actual conditions at the present time. *Id.* (516).

Under present conditions and those that seem probable in the future, whatever competition there may be between the applicant rail carriers and the Isthmian S. S. Lines and the New York and South America Line of the U. S. Steel Products Co., operating between eastern ports of the United States and the western coasts of North and South America, through the Panama Canal, found unsubstantial and merely nominal. *Id.* (517).

BONDED TRAFFIC.

Following *Canales Case*, 37 I. C. C., 573, Commission no jurisdiction over shipments from adjacent foreign country, passing in bond through United States to another foreign country. *Quintal & Lynch (Ltd.) v. F. E. C. Ry. Co.*, 289 (290).

BOTH DIRECTIONS.

Fifth-class rate on rails and angle bars from Steele, Mo., to Madison and East St. Louis, Ill., exceeded lower commodity rate in the opposite direction and subsequently established over route of movement. Reparation awarded. *Cohen-Schwartz Rail & Steel Co. v. St. L.-S. F. Ry. Co.*, 141. On a shipment of cotton linters refused by consignee, combination class rate for return movement higher than rate applicable in the reverse direction not shown unreasonable. *Meridian Cellulose Co. v. Director General*, 283.

BOUNDARY LINE.

Fort Dodge, Iowa, is at a geographical disadvantage because the Mississippi River does not constitute a straight north and south boundary line for the state of Iowa. *Fort Dodge Commercial Club v. Director General* 343 (345).

BRANCH LINE POINTS.

The Commission has required extension of junction point rates to points on branch and connecting lines, where carriers had adopted such practice with respect to other points similarly located and circumstanced. In instant case as no similarity of transportation and operating conditions affecting rates assailed and rates cited disclosed, rates to branch line points on basis of combination rates not found unreasonable or unduly prejudicial. *Caron & Campbell v. Director General*, as Agent, 474 (478).

BROKERS.

On rehearing reparation awarded to complainant factors, as representatives of shippers, on account of charges found in original report, 50 I. C. C., 345, to have been illegally collected on shipments of cotton concentrated at Memphis, Tenn., and subsequently reshipped. *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.*, 212.

Until complainant factors receive payment for their services and expenses they have a property right or interest against their principals in the proceeds resulting from the handling of freight, and the Commission can not justly or legally deprive them of that right by awarding reparation directly to the principals. *Id.* (213).

BURDEN OF PROOF. *See also* **PROOF.**

To establish the fact and amount of damage due to unjust discrimination or undue prejudice as the proximate cause is upon the complainant. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745 (751).

CANADA.

Shipment tendered unroute and moved by way of Canada, although lower rate applied over available intrastate route. *Held*: Shipment misrouted and reparation awarded. *Woodbury Lumber Co. v. Director General*, 324. Express rates on cherries from Lewiston, Idaho, and Union, Oreg., to Regina, Saskatchewan, Canada, exceeded the aggregates of intermediate rates to and from Spokane, Wash. Reparation awarded. *White Bros. & Crum Co. v. Director General*, 511.

Express company operating wholly within Canada not within Commission's jurisdiction. *Id.* (512).

Carriers constituting a through route for traffic from a point in the United States to a point in Canada, concurring in a joint rate which is unreasonably high, are jointly and severally responsible for the damage which results to any shipper on account of such unlawful rate. *Id.* (512).

CANCELLATION.

Import rate canceled by Director General and rate equal to domestic commodity rate established. Subsequently import rate reduced below level of domestic rate. Contention that import rate equal to domestic rate was unreasonable to extent it exceeded lower rate subsequently established, based on fact that it has been customary for import rates to be upon lower scale than domestic rates, not sustained. *Frost & Co. v. Director General, as Agent*, 755 (756).

CAR DISTRIBUTION.

Report of Commission to Senate Resolution No. 376, relative to order of April 15, 1920, entitled "Notice to carriers and shippers." Assignment of Freight Cars, 760.

The rule of law as to distribution of cars in accordance with the relative ratings of the mines as set forth in the *Traer Case*, 13 I. C. C., 451, and sustained by the Supreme Court in 215 U. S., 452 and 479, remained the controlling rule until during the war and under the rules of the Fuel Administration, when the use of assigned cars was abandoned, followed by the imperative necessity of railroads confiscating coal in transit in order to keep their roads in operation. *Id.* (763).

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, setting forth duty of carriers relative to distribution of cars and maintenance of just and reasonable mine ratings, quoted. *Id.* (765).

CAR DISTRIBUTION—Continued.

The act does not attempt to define in detail what is a just and reasonable rate, fare, or charge, or what is a just and reasonable distribution of cars or rating of mines, these being left for determination by the Commission. *Id.* (765).

Paragraph (12) of section 1 of the interstate commerce act does not change the rule of law as laid down in the *Hocking Valley Case*, 12 I. C. C., 398, and the *Traer Case*, 13 I. C. C., 451, governing distribution of cars in accordance with the relative ratings of the mines, but states in statutory form that which had theretofore been the law pursuant to the decisions of the Commission and of the Supreme Court. *Id.* (766).

Railroad Administration's Car Service Section Circular CS-31 (Revised), governing the rating of coal mines (other than anthracite) and car distribution to such mines. Appendix 1. *Id.* (767).

Notice to carriers and shippers issued by the Commission on April 15, 1920, recommending continuance in effect of Railroad Administration's Car Service Section Circular CS-31 (Revised) modified in accordance with decisions of the Commission in *Hocking Valley Case*, 12 I. C. C., 398, and *Traer Case*, 13 I. C. C., 451. Appendix 2. *Id.* (771).

CAR FURNISHING.

Whether complainant had or had not a specific contract with the carrier for delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages, raises an issue not before the Commission nor within its jurisdiction to decide. *Armour Grain Co. v. Director General*, 398 (409).

The duty resting upon carriers to furnish cars to shippers upon reasonable request is not absolute. *Id.* (408).

To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. *Id.* (404).

In times of car shortage, the failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments. *Id.* (408).

Where grain at a competitive point is delivered to a carrier for transportation to a transit point on its line which is entirely dependent upon it for service, and the carrier has reason to believe that reshipment is intended, every effort should be made by the carrier to furnish equipment for prompt shipment from the transit point. *Id.* (408).

CAR-MILE EARNINGS. See EARNINGS.

CAR-SERVICE RULES.

Contention that car-service rules were not incorporated in schedules on file with the Commission is without merit, as no direction that they should be so incorporated and filed had been made by the Commission under the car-service amendment to section 1 of the act, and their publication in such manner is not otherwise required. *Armour Grain Co. v. Director General*, 398 (405).

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, setting forth authority of Commission to suspend operation of car-service rules, and to make just and reasonable directions with respect thereto. *Assignment of Freight Cars*, 760 (765).

CAR SHORTAGE.

During period of, complainant unable to obtain sufficient number of cars at congested grain elevators for outbound movement. Rules governing assessment of demurrage on grain shipped into transit points on local billing and there held for unloading into elevators, not shown unreasonable or unduly prejudicial. *Armour Grain Co. v. Director General*, 398.

In times of, failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments. *Id.* (408).

Acute car shortage has taxed carriers to their utmost capacity and it may be questioned that the selfish interests, either of the roads serving the steel manufacturing sections of the east and middle west or of the trans-continental carriers, would lead them to offer competition or discourage the forwarding via rail-and-ocean routes, through eastern ports, of steel products hitherto moving all-rail to the Pacific coast. Application of United States Steel Products Co., 513 (516).

CAR SPOTTING. *See SPOTTING CARS.*

CARLOAD RATINGS.

Carriers are entitled to reasonable compensation for their services, but fear that the consumer may not participate in prospective reductions in ratings and rates is no valid objection to the establishment of a carload rating and is without weight in determining questions of reasonableness. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (210).

CARS MOVING ON OWN WHEELS.

Rates on locomotive and tender, dead, on their own wheels, from Bellemont, Ariz., to Los Angeles, Calif., there repaired and reshipped to Williams, Ariz., found unreasonable. Reasonable rates prescribed and reparation awarded. *Saginaw & Manistee Lumber Co. v. A., T. & S. F. Ry. Co.*, 167.

CARS OFF LINE.

Charges in excess of those which would have accrued at through rates plus legally applicable reconsigning charges found to have resulted from the unlawful refusal of carriers to permit reconsignment in accordance with their tariffs, on shipments transferred into other cars at reconsignment point on account of operating rules which prohibited cars from moving off the lines of the carriers. Reparation awarded. *Schuetz & Co. v. Director General*, 709.

CHARACTERISTICS OF COMMODITY.

Sugar recognized from a transportation standpoint as among the most attractive commodities which move in heavy volume. It loads heavily, yielding per car-mile revenue in excess of most other tonnage, requires no special equipment, and needs no expedited or special service. *Montgomery Chamber of Commerce v. Director General*, 610 (617).

CIRCUITOUS ROUTE.

Carriers whose routes are 15 per cent or more longer than the direct lines authorized to continue lower rates to farther distant than to intermediate points. *Arkansas Jobbers & Mfrs. Assn. v. Director General*, 231 (240).

CITY LIMITS.

There is no requirement of law that the rate shall be the same to all points of delivery in the same industrial district, even when the district is all embraced within the municipal limits of one city instead of comprising two separate municipalities. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (647-648).

CLASS AND COMMODITY RATES. *See also* CLASS RATES; COMMODITY RATES.

From St. Louis, Mo., and points basing thereon, to Helena, Ark., found unduly prejudicial to Helena. Nonprejudicial basis of rates prescribed for the future. *Helena Traffic Bureau v. St. L., I. M. & S. Ry. Co.*, 11. Class rate on staves from Brilliant, Ala., to Paducah, Ky., exceeded lower commodity rate subsequently established. Reparation awarded. *Paducah Board of Trade v. I. C. R. R. Co.*, 37 (38).

Fifth-class rate on soya-bean oil from Los Angeles, Calif., to Ivorydale, Ohio, exceeded lower commodity rate subsequently established. Reparation awarded. *Procter & Gamble Co. v. Director General*, 42.

Between Huntington, W. Va., and points in trunk line and New England territories, based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 64 (76).

Between Portsmouth, Ohio, and Ashland, Ky., and points in trunk line and New England territories based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Board of Trade of Portsmouth v. A. C. R. R. Co.*, 78.

From Ohio and Mississippi River crossings, Chicago, Ill., and related points, to Meridian, Miss., found unduly prejudicial to Meridian and unduly preferential of New Orleans, La., Mobile, Ala., and Vicksburg, Miss. *Meridian Traffic Bureau v. Director General*, 107 (111).

Except on lumber, between Pascagoula and Moss Point, Miss., and Ohio and Mississippi river crossings north of Memphis, Tenn., Chicago, Ill., and related points, found unduly prejudicial to extent they exceed the rates between the last named points and New Orleans, Mobile, and Gulfport. *Chamber of Commerce, Moss Point, Miss. v. L. & N. R. R. Co.*, 112.

Except on lumber, between Pascagoula and Moss Point, Miss., and Atlanta, Ga., and Chattanooga and Knoxville, Tenn., found unduly prejudicial to extent they exceed the rates between the last named points and New Orleans, La., and Gulfport, Miss. *Id.* (117-118).

Fifth-class rate on rails and angle bars from Steele, Mo., to Madison and East St. Louis, Ill., exceeded lower commodity rate subsequently established. Reparation awarded. *Cohen-Schwartz Rail & Steel Co. v. St. L.-S. F. Ry. Co.*, 141.

No opinion expressed as to the reasonableness of certain class and commodity rates, in effect prior to federal control, from various points of origin to Springfield, Tenn., as material changes in the rates assailed have been made and a substantial measure of the relief asked will be secured as a result of the Commission's order in *Murfreesboro Board of Trade*, 55 I. C. C., 648. *City of Springfield v. L. & N. R. R. Co.*, 337.

Applications to continue lower class and commodity rates between points in trunk-line territory and points on the west bank of Lake Michigan than to and from intermediate points in the 106 and 108 per cent groups in Michigan, granted, provided that rates to and from the intermediate points conform to conclusions in *Michigan Percentage Cases*, 47 I. C. C., 409. Fourth Section Departures Lake Michigan Ports, 418.

CLASS AND COMMODITY RATES—Continued.

Class C rate on old rails from Lafayette, La., to East St. Louis and Madison, Ill., exceeded lower commodity rate in effect from Texas common points to St. Louis, Mo., and subsequently made applicable from Lafayette to East St. Louis and Madison. Reparation awarded. *Cohen-Schwartz Rail & Steel Co. v. M. L. & T. R. R. & S. S. Co.*, 479.

Class rates on cypress lumber from New Orleans, La., to Violet, Phoenix, and Pointe-a-la-Hache, La., exceeded lower commodity distance scale subsequently established. Reparation awarded. *St. Bernard Cypress Co. v. Director General*, as Agent, 489.

Rate adjustments between points in zones 1, 2, 3, and 4 in North Carolina and Norfolk and Richmond, Va., and points in South Carolina and the southeast; and between points in zones 1 and 2 in North Carolina and Norfolk and Richmond, and eastern ports and interior eastern points, found unduly prejudicial to the North Carolina points and unduly preferential of Norfolk and Richmond. Reasonable relationships prescribed. *Corporation Commission of North Carolina v. Director General*, 523.

Sixth-class rate on coal ashes and cinders from Jersey City, N. J., to Rahway and Woodbridge, N. J., exceeded lower commodity rates subsequently established. Reparation awarded. *Philadelphia Quartz Co. v. Director General*, as Agent, 632.

Sixth-class rate on coal ashes and cinders from Perth Amboy, N. J., to Rahway, N. J., exceeded lower commodity rate from Jersey City, N. J., to Carteret, N. J. Reparation awarded. *Id.* (633).

Domestic fifth-class rate on imported soya-bean oil from Seattle, Wash., to Babbitt, N. J., exceeded import commodity rate legally applicable. Shipments overcharged and reparation awarded. *Frost & Co. v. Director General*, as Agent, 755.

Following *Volker & Co.*, 55 I. C. C., 163, third-class rate on congoleum from Marcus Hook, Pa., to Oklahoma City, Okla., found unreasonable to extent it exceeded lower commodity rate on oilcloth and linoleum. Reasonable rate prescribed and reparation awarded. *Congoleum Co. v. Director General*, as Agent, 757.

CLASS RATES. *See also* CLASS AND COMMODITY RATES.

From Chicago and Cairo, Ill., St. Louis, Mo., and Louisville, Ky., and rates on grain and grain products from Cairo and St. Louis to Jackson, Miss., found unduly prejudicial to Jackson and unduly preferential of New Orleans, La., and Vicksburg and Natchez, Miss. *Meridian Traffic Bureau v. Director General*, 107 (111).

Third-class rates on electric storage batteries in straight carloads, not found unreasonable or discriminatory as compared with fourth-class rates on batteries in mixed carloads with electrical appliances. *Bulck Motor Co. v. Director General*, 131.

First-class rate on baking and drying ovens from Detroit, Mich., to Oakland, Calif., exceeded lower class A rate subsequently established. Reparation awarded. *Chevrolet Motor Co. v. Director General*, 149.

Based on Mississippi River combinations applicable between Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa, and points east of the Indiana-Illinois state line not found unreasonable or unduly prejudicial of competing points. *Fort Dodge Commercial Club v. Director General*, 343.

Table comparing distances and first-class rates from Richmond, Va., and Raleigh, N. C., to various points in the southeast. *Corporation Commission of North Carolina v. Director General*, 523 (525).

CLASS RATES—Continued.

Statement of present class rates between North Carolina points and South Carolina points as compared with present rates between various points, including rates established or not found unreasonable by the Commission for comparable distances. *Id.* (529-530).

Comparison of distances and first-class rates from representative northern points to Richmond, Va., and Raleigh, N. C. *Id.* (538).

CLASSIFICATION. *See also* CONSOLIDATED CLASSIFICATION.

In General: Value and density are important considerations in determining ratings of commodities, but they must be used in conjunction with the other elements of classification. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (209).

Batteries, storage: Following *Hudson Motor Car Co.*, 38 I. C. C., 371, and 42 I. C. C., 341, third-class rating on, from Philadelphia, Pa., to Flint and Detroit, Mich., not found unreasonable or unjustly discriminatory. *Bulck Motor Co. v. Director General*, 131.

Frames, door and window: Classification to apply on door and window casings and frames, made of iron or steel, or wood covered with iron, steel or tin, prescribed in original report 55 I. C. C., 402, modified to conform to findings applicable to these articles as set forth in *Consolidated Classification Case*, 54 I. C. C., 1. *Dahlstrom Metallic Door Co. v. E. R. R. Co.*, 52.

Leather, scrap: Following *Atlas Leather Mfg. Co.*, 55 I. C. C., 394, fifth-class rating, minimum 24,000 pounds, applied on scrap leather of a declared or agreed value not exceeding 3.5 cents per pound found unreasonable to extent it exceeded sixth-class, minimum 30,000 pounds. Reparation denied. *Atlas Leather Mfg. Co. v. N. Y., N. H. & H. R. R. Co.*, 481.

Separators, centrifugal cream:

Rates in official, western, and southern classifications on, c. l. and l. c. l., not shown to be unreasonable *per se* or in comparison with the ratings and rates on agricultural implements, other than hand. *De Laval Separator Co. v. A. & R. R. R. Co.*, 668 (673, 676).

Ratings and rates in official, western, and southern classifications on, in boxes, not shown unreasonable in comparison with ratings and rates on the same commodity in crates. *Id.* (673, 676).

Tires and tubes, rubber: Ratings and rates on rubber-tire tubes, pneumatic rubber tires, and solid rubber tires, unmounted, and on solid rubber tires mounted on iron or steel bases, in straight or mixed carloads, from points in official and western classification territories to points in southern classification territory, when traffic is governed by the southern classification, not found unreasonable in the past, but for the future will be unreasonable to extent they exceed rating of third class. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206.

COMBINATION RATES. *See also* LOCAL RATES.

No joint rate published and combination rate assessed. Lower combination in effect applicable under Rule 5 (b) of Tariff Circular 18-A. *Held*: Rate charged not found unreasonable but shipments overcharged. Refund directed. *American Agricultural Chemical Co. v. H. & B. V. Ry. Co.*, 177.

COMBINATION RATES—Continued.

Class rates based on Mississippi River combinations, applicable between Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa, and points east of the Indiana-Illinois state line not found unreasonable or unduly prejudicial of competing points. *Fort Dodge Commercial Club v. Director General*, 343.

Legally applicable on hogs from certain points to Camp Pike and Carbell Spur, Ark., and from Camp Pike and Carbell Spur to other destinations, constructed by adding to the Dalhoff-Camp Pike local rates, rates to and from Dalhoff, higher than joint distance scale of rates in effect from points in Arkansas to points in Oklahoma, and from points in Texas to points in Arkansas, under the tariff of which Camp Pike and Carbell Spur are not included, not found unreasonable or unduly prejudicial. *Caron & Campbell v. Director General*, as Agent, 474.

On anthracite coal from certain points in Pennsylvania to destinations in Iowa, Kansas, Missouri, and Nebraska, both factors of which were increased by the Director General, not found unreasonable or unduly prejudicial. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 739.

On slack barrel gum staves from Greenwood, Miss., to Hastings, Fla., not found unreasonable or otherwise unlawful due to reduction in the factor from Greenwood to Jacksonville, Fla. *Whitehouse Barrel Co. v. Director General*, 753.

COMMODITIES CLAUSE.

Determination of question of payment of divisions to short lines by trunk lines in violation of commodities clause does not come within Commission's administrative functions, and is more appropriately a matter for the courts. *St. Louis, Troy & Eastern R. R. Co.*, 371 (374).

COMMODITY RATES. *See also* CLASS AND COMMODITY RATES.

On glass bottles from Huntington, W. Va., to eastern cities found unduly prejudicial to extent they exceed the rates in effect from Charleston, W. Va., by more than 3 per cent of the Chicago-New York rate. *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 64 (76).

On citrus fruits, bananas, pineapples, and coconuts from New Orleans, La., and Mobile, Ala., to points in Arkansas should be readjusted to afford greater recognition to relative distances. Reasonable scale prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (237).

On citrus fruits, pineapples, and vegetables from Jacksonville, Fla., to certain points in Arkansas not shown unreasonable or unduly prejudicial. *Id.* (240).

Joint commodity rate on oats from South Dakota to Portland and Helix, Oreg., and Tacoma, Wash., exceeded lower "special" commodity rate subsequently established. Reparation awarded. *Northern Grain & Warehouse Co. v. Director General*, 629.

COMMON CARRIER.

The following roads found to be common carriers, which may lawfully receive from their trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs:

Delray Connecting R. R. Co., 97 (105).

La Salle & Bureau County R. R., 173 (176).

Pittsburgh, Allegheny & McKees Rocks R. R. Co., 1 (9).

St. Louis, Troy & Eastern R. R. Co., 371.

Springfield Terminal Ry. Co., 274 (280).

COMPANY MATERIAL.

Crossties sold under contract to railroad company, providing for delivery f. o. b. Louisville, Ky., moved as routed under through bill of lading to destination beyond. Allegation that rates charged were unreasonable as lower joint rates applicable via Cairo, Ill., *Held*: Rates in accordance with routing instructions not applicable through Louisville by way of Cairo as lower rate implied a continuous movement beyond Cairo, and for movement via that point through Louisville would entail a back haul. *Wright Tie Co. v. B. S. W. R. R. Co.*, 286.

If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to railway fuel, as was done when priorities were issued by the President's priority agent during the war. Assignment of Freight Cars, 760 (766).

COMPARATIVE RATES.

Acid, sulphuric: Rates on, in tank-car loads, exceeded lower rate on nitrating acid. Measure of reasonable rate prescribed and reparation awarded. *Du Pont de Nemours & Co. v. Director General*, 270.

Batteries, electric storage: Third-class rates on, in straight carloads, not found unreasonable or discriminatory as compared with fourth-class rates on batteries in mixed carloads with electrical appliances. *Bulck Motor Co. v. Director General*, 131.

Bullion: For comparative purposes, iron and steel articles and lumber most nearly approach the transportation characteristics of bullion. *Anaconda Copper Mining Co. v. Director General*, 723 (730).

Congoleum: Following *Volker & Co.*, 55 I. C. C., 163, rate on, found unreasonable to extent it exceeded rate on oilcloth and linoleum. Reasonable rate prescribed and reparation awarded. *Congoleum Co. v. Director General*, as Agent, 757.

Copra: Import rate on, found unreasonable as compared with rates on dried beans, green coffee, and other foodstuffs. Reparation awarded. *Procter & Gamble Co. v. Director General*, 465 (467-468).

Extinguishers, chemical fire: First-class any-quantity rate on hand, other than wheeled, not found unreasonable as compared with third-class carload rates on hand fire engines, other than chemical. *Pyrene Mfg. Co. v. Director General*, 143.

Gas, liquefied petroleum: Fifth-class rates on, exceeded lower commodity rate on gasoline, which rate was subsequently made applicable to liquefied petroleum gas. Reparation awarded. *Akin Gasoline Co. v. Director General*, 133.

Oil, soya-bean: Rate on, should not exceed the rate on kindred vegetable oils shipped in the same manner between same points. *Procter & Gamble Co. v. Director General*, 42 (44).

Separators, cream: Ratings in official, western, and southern classifications on centrifugal cream separators, c. l. and l. c. l., not shown unreasonable *per se* or in comparison with the ratings and rates on agricultural implements, other than hand. *De Lavel Separator Co. v. A. & R. R. R. Co.*, 668 (673, 676).

Staves, gum: Rate legally applicable on, found unreasonable to extent it exceeded rate on lumber from and to the same points. Reasonable maximum basis of rates prescribed and reparation awarded. *Ozark Cooperage & Lumber Co. v. Director General*, as Agent, 471.

COMPARATIVE RATES—Continued.

Sugar: Rate on, compared with rates on other commodities of similar transportation characteristics. *Mobile Chamber of Commerce v. Director General*, as Agent, 605 (607); *Montgomery Chamber of Commerce v. Director General*, 610 (614).

Tracks, portable railway: Carload rates on, in sections, for export, found unreasonable to extent they exceeded rates on fishplates, switches, turntables, and crossovers. Reparation awarded. *Lakewood Engineering Co. v. Director General*, 311.

COMPENSATORY RATES.

Unfavorable financial conditions of a carrier can not be lawfully remedied by the imposition of unreasonable rates, and a favorable financial condition can not lawfully be made the basis for rates that are non-compensatory. *Phelps Dodge Corp. v. Director General*, 714 (718).

COMPETITION.**Carrier:**

Where carrier competition is the only influence which has operated to reduce rates to a competitive point the direct lines and those less than 15 per cent longer must observe the fourth section and not charge higher rates to intermediate points. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (240).

Defendant did not participate in joint through rate because it deemed rate too low, but when its nonparticipation therein affected its traffic it was forced to meet the competition and publish its concurrence. *Tuffil Bros. Pig Iron & Coke Co. v. L. & N. R. R. Co.*, 491 (492).

Market:

Policy of according Huntington, W. Va., specific rates on certain important commodities as to which there is keen competition between Huntington and other cities in the same general territory approved. *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 64 (76).

Rates on grinding balls from Los Angeles, Calif., to interstate destinations found unduly preferential of competitors at Chicago, Ill., and other eastern points of origin. *Los Angeles Foundry Co. v. Director General*, 184.

Rates on glass sand from Ottawa, Ill., and related points, to Huntington, W. Va., found unreasonable to extent they exceeded rate subsequently established to enable Huntington to meet competition at other points north of the Ohio River. Reparation awarded. *Boldt Co. v. Director General*, 259 (260).

Rates on concrete drain tile from Sioux City, Iowa, to points in South Dakota, east of Missouri River, not found unreasonable, but found unduly prejudicial in favor of competitors located at other drain-tile manufacturing points in Iowa and Minnesota. Reasonable basis of rates prescribed and reparation denied. *Sioux City Concrete Pipe Co. v. C. & M. & St. P. Ry. Co.*, 303.

Persons: Fact that competitors may have enjoyed larger profits does not establish damage as a consequence of undue prejudice. *Home Packing & Ice Co. v. Director General*, 691 (697).

COMPETITION—Continued.

Pipe line: The Commission may not require rail carriers to reduce rates not shown unreasonable in and of themselves in order that the users of such rates may better compete with others who are in a position to utilize the less costly service of pipe lines. *Winona Oil Co. v. Director General*, 152 (154).

Water:

Acute car shortage has taxed carriers to their utmost capacity and it may be questioned that the selfish interests, either of the roads serving the steel-manufacturing sections of the east and middle west or of the transcontinental carriers, would lead them to offer competition or discourage the forwarding via rail-and-ocean routes, through eastern ports, of steel products hitherto moving all-rail to the Pacific coast. *Application of United States Steel Products Co.*, 513 (516).

Under present conditions and those that seem probable in the future, whatever competition there may be between the applicant rail carriers and the Isthmian S. S. Lines and the New York and South America Line of the U. S. Steel Products Co., operating between eastern ports of the United States and the western coasts of North and South America, through the Panama Canal, found unsubstantial and merely nominal. *Id.* (517).

COMPONENT. *See FACTOR.*

CONCESSION.

Upon further hearing, complainant seeking concessions in freight charges on goods shipped in steel containers conforming to certain specifications, on basis of net weight, excluding weight of container, and on the empty container when returned knocked down, *Held:* Under the circumstances concessions not justified and findings in original report, 51 I. C. C., 686, affirmed. *Pneumatic Scales Corp. v. A. & R. R. Co.*, 308.

In freight charges based upon the manner in which goods are packed or the containers which are used are not unlawful, provided they are reasonably related to the advantages accruing to the carriers from the improved packing or loading. *Id.* (309).

CONCURRENCE.

Defendant did not participate in joint through rate because it deemed rate too low, but when its nonparticipation therein affected its traffic, it was forced to meet the competition and publish its concurrence. *Tuffi Bros. Pig Iron & Coke Co. v. L. & N. R. R. Co.*, 491 (492).

Carriers constituting a through route for traffic from a point in the United States to a point in Canada, concurring in a joint rate which is unreasonably high, are jointly and severally responsible for damages resulting to any shipper on account of such unlawful rate. *White Bros. & Crum Co. v. Director General*, 511 (512).

CONFERENCE RULING. *See ADMINISTRATIVE RULING.*

CONFISCATION.

The rule of law as to distribution of cars in accordance with the relative ratings of the mines as set forth in the *Traer Case*, 13 I. C. C., 451, and sustained by the Supreme Court in 215 U. S., 452 and 479, remained the controlling rule until during the war and under the rules of the Fuel Administration, when the use of assigned cars was abandoned, followed by the imperative necessity of railroads confiscating coal in transit in order to keep their roads in operation. *Assignment of Freight Cars*, 760 (763).

CONFLICTING RATES.

Named in separate tariffs but lower rates did not cancel or in any way refer to rates originally published in individual tariffs. *Held*: Higher rates originally published found legally applicable and not unreasonable or otherwise unlawful. *Highland Iron & Steel Co. v. Director General*, as Agent, 547.

Where named in separate tariffs the rate first established is the legal rate, upon the principle that lawfully established rates remain in effect until specifically canceled. *Id.* (548).

CONGESTION.

Service of loading waste paper stock, provided for in tariffs, was not rendered due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. *Held*: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload outweighed expense of loading with their own employees, for which service there was no obligation on part of carriers to make an allowance. *Waste Merchants Asso. v. Director General*, 686.

CONSIGNOR AND CONSIGNEE.

Where freight charges are paid by consignees, but are charged back to the consignors, the consignees are not entitled to reparation. *Muskogee Wholesale Grocer Co. v. M., K. & T. Ry. Co.*, 125 (127-128).

CONSOLIDATED CLASSIFICATION.

Rule providing basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars returned to original loading points, not found unreasonable or unduly prejudicial as compared with rule for return of empty gas cylinders and wooden tank cars containing a portion of the commodity therein. *New Jersey Zinc Co. v. Director General*, 201.

CONTAINERS. See also PACKING.

Upon further hearing, complainant seeking concessions in freight charges on goods shipped in steel containers conforming to certain specifications, on basis of net weight, excluding weight of container, and on the empty container when returned knocked down, *Held*: Under the circumstances concessions not justified and findings in original report, 51 I. C. C., 686, affirmed. *Pneumatic Scales Corp. v. A. & R. R. R. Co.*, 308.

Concessions in freight charges based upon the manner in which goods are packed or the containers which are used are not unlawful, provided they are reasonably related to the advantages accruing to the carriers from the improved packing or loading. *Id.* (309).

CONTRACT.

Crossties sold under contract to railroad company, providing for delivery f. o. b. Louisville, Ky., moved as routed under through bill of lading to destinations beyond. Allegation that rates charged were unreasonable as lower joint rate applicable via Cairo, Ill., *Held*: Rates in accordance with routing instructions not applicable through Louisville by way of Cairo, as lower rate implied a continuous movement beyond Cairo, and for movement via that point through Louisville would entail a back haul. *Wright Tie Co. v. B. S. W. R. R. Co.*, 286.

CONTRACT—Continued.

Contention that complainant is entitled to settlement with purchaser of crossties, when sold under contract calling for delivery f. o. b. Louisville, Ky., upon basis of divisions of the joint rates accruing to lines south of Louisville, which would be lower than the local rates to that point, *Held*: Not within scope of the complaint or the Commission's jurisdiction. *Id.* (288).

Purchase price based on freight rate under agreement with consignors that one-half of any excess over and above such rate would be borne by consignors. Charges were paid and borne by complainant and one-half of excess charged back to consignors. Reparation awarded complainant, who introduced in evidence assignments from consignors of their claims for reparation. *Bare Paper Co. v. Director General*, as Agent, 329 (331.)

Whether complainant had or had not a specific contract with the carrier for delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages, raises an issue not before the Commission nor within its jurisdiction to decide. *Armour Grain Co. v. Director General*, 308 (409).

COST OF SERVICE.

Cost to complainant of moving cars between interchange or spur track, just within the plant, and places of unloading or loading, found to exceed the allowance paid to it by defendant. *United States Cast Iron Pipe & Foundry Co., v. Director General*, 677 (685).

COST OF TRANSPORTATION.

Rates on copper bullion from Arizona points to New York, N. Y., via all-rail and rail-and-water routes not found unreasonable; neither should rail-and-water rates be lower than the all-rail rates as there is no evidence to sustain contention that cost of transportation obtaining during federal control is or was less via rail-and-water than via all-rail routes. *Phelps Dodge Corp. v. Director General*, 714 (719, 720).

CREDIT.

Rules and regulations for the prompt payment of transportation rates and charges as provided in section 3 of the act to regulate commerce as amended by section 405 of the transportation act, 1920, prescribed. Regulations for Payment of Rates and Charges, 591.

CREOSOTING IN TRANSIT. See TRANSIT ARRANGEMENTS.**CUSTOM.**

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate, is important evidence that the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (682-683).

Import rate canceled by Director General and rate equal to domestic commodity rate established. Subsequently import rate reduced below level of domestic rate. Contention that import rate equal to domestic rate was unreasonable to extent it exceeded lower rate subsequently established, based on fact that it has been customary for import rates to be upon lower scale than domestic rates, not sustained. *Frost & Co. v. Director General*, as Agent, 755 (756).

DAMAGES. *See also* **WAR TAX.**

By section 10 of federal control act, authority to determine the justness and reasonableness of tariff rule initiated by President through Director General, and to award reparation on intrastate shipments moving thereunder is vested in the Commission. *San Antonio Freight Bureau v. Director General*, 45 (46).

Where freight charges are paid by consignees, but are charged back to the consignors, the consignees are not entitled to reparation. *Muskogee Wholesale Grocer Co. v. M., K. & T. Ry. Co.*, 125 (127-128).

On rehearing reparation awarded to complainant factors, as representatives of shippers, on account of charges found in original report, 50 I. C. C., 345, to have been illegally collected on shipments of cotton concentrated at Memphis, Tenn., and subsequently reshipped. *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.*, 212.

Until complainant factors receive payment for their services and expenses they have a property right or interest against their principals in the proceeds resulting from the handling of freight, and the Commission can not justly or legally deprive them of that right by awarding reparation directly to the principals. *Id.* (213).

Following *Darnell-Taenzer Co.*, 245 U. S., 531, a party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable. *Koenig Coal Co. v. G. T. Ry. Co.*, 241 (242).

The Commission's jurisdiction to award reparation on intrastate shipments is confined to the period of federal control. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (275).

A violation of the fourth section of the act does not, without proof of damage, entitle the complainant to an award of reparation. *Illinois Brick Co. v. Director General*, 320 (323); *Union Tanning Co. v. Director General*, 354 (358).

Contention that Commission is without jurisdiction to award reparation on misrouted shipment moving through Canada, where lower rate applied via an intrastate route, not sustained. *Woodbury Lumber Co. v. Director General*, 324 (325).

On further hearing, reparation awarded on basis of finding in original report, 37 I. C. C., 441, in which rates on anthracite coal, prepared and pea sizes, from Lehigh coal region of Pennsylvania to Perth Amboy, N. J., for transshipment by water, were found unreasonable to extent they exceeded rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Markle Co. v. L. V. R. R. Co.*, 375.

In original report, 38 I. C. C., 206, reparation awarded on account of unreasonable rates on anthracite coal from Lehigh coal region of Pennsylvania to Elizabethport, N. J., for transshipment by water, on erroneous basis of local rates. Upon supplemental report, former finding corrected and reparation awarded on basis of reshipping rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Dodson & Co. (Inc.) v. C. R. R. Co. of N. J.*, 381.

Upon further hearing reparation awarded on basis of finding in original report, 38 I. C. C., 333, in which rates on anthracite coal in prepared and pea sizes from Wyoming anthracite coal region of Pennsylvania to Elizabethport, N. J., for reshipment by water, were found unreasonable to extent they exceeded rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Meeker & Co. v. C. R. R. Co. of N. J.*, 414.

DAMAGES—Continued.

Fact that certain shipments may have moved at rates which were subsequently increased can not be considered as mitigating damages due to the collection of unreasonable rates upon other shipments of the same or different commodities. The right of a shipper to recover damages accrues when he pays an unreasonable rate and the law does not inquire into later events. *Id.* (416).

Upon further hearing and following *Meeker & Co.*, 57 I. C. C., 414, reparation awarded on basis of rates found reasonable in *Anthracite Case*, 37 I. C. C., 460, on anthracite coal, in prepared and pea sizes, from Red Ash colliery, in the Wyoming coal region of Pennsylvania to Elizabethport, N. J., for reshipment by water. *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, 432.

In the exercise of "that flexible limit of judgment which belongs to the power to fix rates," finding in former reports, 39 I. C. C., 88, and 45 I. C. C., 248, denying reparation on precooled and pre-iced oranges from California points to destinations in other states and in Canada, reaffirmed on reargument. *Arlington Heights Fruit Exchange v. S. P. Co.*, 580.

Upon further consideration, rates on bituminous coal from Appalachia and Dante districts in Virginia to Spartanburg, Union, and other points in South Carolina taking same or related rates, found unreasonable during specified periods, to extent they exceeded rates found reasonable in *Bituminous Coal Rates to the Southeast*, 37 I. C. C., 652, and 53 I. C. C., 741. Reparation awarded. *Cotton Manufacturers' Asso. of S. C. v. C. C. & O. Ry.*, 584 (587, 589).

The party who pays an unreasonable rate is damaged in an amount equal to the difference between the rate paid and the rate found reasonable by the Commission. *Id.* (587).

Reparation awarded certain interveners upon shipments of coal moving at rates found unreasonable in supplemental report, 53 I. C. C., 741. *Id.* (589).

Rates on heavy oils from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unreasonable to extent they exceeded 25 cents per 100 pounds, or a differential of 5 cents higher than the rate to Chicago, Ill., no justification being shown for any greater differential for application in connection with the lower rates on heavy oils than on refined oils. Reparation awarded. *Wadhams Oil Co. v. Director General, as Agent*, 597 (603).

Fact that competitors may have enjoyed larger profits does not establish damage as a consequence of undue prejudice. *Home Packing & Ice Co. v. Director General*, 691 (697).

Prices were fixed by the Food Administration, and at no time and in no instance were they made or controlled, to complainant's detriment, by any competitor by virtue of the preferential rate herein found to exist. Reparation denied for want of proof. *Id.* (697).

In the absence of proof of damage, a departure from the long-and-short-haul provision of the fourth section of the act does not entitle complainant to reparation. *Id.* (697).

Findings in supplemental report, 37 I. C. C., 345, denying reparation on shipments on which complainants failed to establish that they bore the transportation charges, reaffirmed. *Oden & Elliott v. S. A. L. Ry.*, 698.

DAMAGES—Continued.

Party claiming reparation is not entitled to recover unless it is definitely shown that he finally bore the unlawful freight charges as such. *Id.* (699).
Original complaint brought to recover reparation for account of complainant only, and not as agent for vendors. Amending of complaint by permitting intervention of the latter who paid and bore the freight charges can have no effect as they were not joined as parties complainant within the statutory period. Interveners' claim for reparation found barred. *Id.* (699).

The burden of proof to establish the fact and amount of damage due to unjust discrimination or undue prejudice as the proximate cause is upon the complainant. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745 (751).

Only damage alleged by complainant was loss of profit, but as prices of all commodities sold by complainant and its competitors were fixed by the government and competitors were not able to and did not control the buying or selling markets, it has not been shown that complainant's profits would have been any greater had the existing discrimination and prejudice been removed. Reparation denied. *Id.* (752).

DAYLIGHT SAVING. *See* TIME.

DECLARED VALUE. *See* RELEASED RATES.

DELIVERY.

Following *Este Co.*, 34 I. C. C., 469, and *Trexler Lumber Co.*, 49 I. C. C., 121, demurrage charges unlawfully collected on shipments specifically routed but held at a point short of billed destination by carrier's agent, who failed to turn the shipments over to the delivering carrier as specified in bill of lading. *Texas Co. v. Director General*, 48.

A carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (681).

Nature and extent of delivery of c. l. traffic has differentiated with the increasing complexity in the development of industrial enterprises, to which trunk line carriers may be required to perform services of delivery without charge in addition to the transportation rate, or, if it choose, employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable. *Id.* (681-682).

Perhaps the most common form of delivery is the setting of a car on team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and substitute for team-track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main tracks. *Id.* (682).

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate is important evidence that the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. *Id.* (682-683).

Elements considered pertinent to the determination of what constitutes a reasonable delivery service and the carrier's legal obligation in a particular instance. *Id.* (683).

DELIVERY—Continued.

In testing the extent of a carrier's legal obligation as to delivery of c. l. freight, the extent of the service involved in a typical team-track delivery or in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery—are entitled to primary consideration. *Id.* (683).

Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of c. l. traffic. As the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. *Id.* (683).

To comply with the legal obligation of delivery, a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. *Id.* (683).

Not satisfactorily established that the legal obligation of a carrier goes to the extent of requiring it to spot cars at places of unloading or to take cars from places of loading within a plant. Obligation as to delivery may have been complied with when the cars are placed on interchange track or on the spur within the plant connecting with the interchange track. *Id.* (683-684).

Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive either team-track or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such industry, or that the line-haul rates have been rendered unreasonable or otherwise unlawful by the withdrawal of the spotting service by the line-haul carrier or its failure to reimburse the industry for the entire cost of the spotting service which the latter performs. *Id.* (684).

Switching allowances to large industries have developed until in many instances they are little better than undue preferences, and represent service which the Commission would *ab initio* long hesitate to direct a carrier to render in effecting delivery of c. l. freight. They are frequently compelled by the fear of loss of large tonnage, deplete unnecessarily the revenues of carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients to other shippers who receive only average delivery service. *Id.* (684).

On traffic originating at points west of Groton, Conn., for delivery to complainant's plant at that point, rule required that shipments be billed to Midway, Conn., for delivery via ferry extension, necessitating a back haul from Midway to Groton. *Held*: Charges assessed in so far as they exceed by more than \$8 per car the charges on like traffic delivered in Groton proper, found unduly prejudicial. *Groton Iron Works v. N. Y., N. H. & H. R. R. Co.*, 704.

DELRAY CONNECTING RAILROAD COMPANY.

Found to be a common carrier which may lawfully receive from its trunk-line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *Delray Connecting R. R. Co.*, 97 (105).

History and description of. *Id.* (97-99.)

DEMURRAGE.

Following *Este Co.*, 34 I. C. C., 469, and *Tresler Lumber Co.*, 49 I. C. C., 121, demurrage charges unlawfully collected on shipments specifically routed but held at a point short of billed destination by carrier's agent, who failed to turn the shipments over to the delivering carrier as specified in bill of lading. *Texas Co. v. Director General*, 48.

Legally applicable demurrage charges not found unreasonable or to have been unlawfully assessed as mailing of notice of arrival by defendant to consignee at address indicated on bill of lading was in full compliance with tariffs. *Lowry Lumber Co. v. Director General*, 139.

On lumber held beyond free time at reconsignment point due to failure of consignee to immediately notify complainant of arrival, demurrage based upon increased charges instituted by Director General for purpose of insuring prompt release of equipment, not found unreasonable. *Lowry Lumber Co. v. Director General*, 145.

Following *Wood Case*, 53 I. C. C., 183, demurrage charges on cars held at a reconsignment point because of embargoes at points to which diversion was ordered, found illegal as tariffs contained no provision against reconsignment to embargoed points. Reparation awarded. *Atlantic Lumber Co. v. N. Y., P. & N. R. R. Co.*, 129; *Trantum & Danzer (Inc.) v. N. Y., P. & N. R. R. Co.*, 281.

Notice of arrival mailed by defendant, but was not received by complainant.

Held: Following *Ohio Iron & Metal Co.*, 34 I. C. C., 75, demurrage charges properly assessed, as carrier's duty was performed when it placed notice in mail. *Eastern Lumber Co. v. Director General*, 272.

Complaint alleging unreasonable demurrage charges on a shipment moving in bond from a point in an adjacent foreign country, through the United States, to another foreign country, dismissed for want of jurisdiction. *Quintal & Lynch (Ltd.) v. F. E. C. Ry. Co.*, 289.

Complainant notified by telephone and written notice mailed showing car initials and numbers, but not the contents or originating points. Finding in original report, 52 I. C. C., 304, that arrival notices were in substantial compliance with tariff requirements, and that demurrage charges legally accrued, affirmed on rehearing. *Steinhardt & Kelly v. E. R. R. Co.*, 369.

During period of car shortage complainant unable to obtain sufficient cars at congested grain elevators for outbound movement. Rules governing assessment of demurrage on grain shipped into transit points on local billing and there held for unloading into elevators, not shown unreasonable or unduly prejudicial. *Armour Grain Co. v. Director General*, 398.

To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. *Id.* (404).

In times of car shortage the failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments. *Id.* (408).

DEMURRAGE—Continued.

Complainant erroneously informed by connecting carrier that billed destination not embargoed. Initial carrier accepted shipment and switched same to connecting line where refused and returned to complainant, who was then notified of embargo. *Held*: Demurrage accruing after receipt of advice that car could not move in accordance with instructions, legally assessed as duty devolved upon complainant to abate demurrage by unloading within free time. *Cleveland Cooperage Co. v. Director General*, 428.

Although embargoes are placed by reason of a carrier's disability, demurrage may properly be assessed for a detention for which the shipper is directly responsible and which he can avoid or abate. *Id.* (425).

Notwithstanding oral and written notice that repairs were to be made to trestles, complainant placed orders for coal in excess of normal requirements and cars reached the plants in excess of the facilities regularly available for unloading. *Held*: Demurrage accruing not unreasonable or unlawful, and no negligence may be imputed to defendant who interfered as little as possible with facilities for receiving and unloading and completed repairs with least possible delay. *Cumberland Glass Mfg. Co. v. Director General*, 439.

Embargo in effect at billed destination. Car reconsigned but complainant failed to request change in name of consignee. Upon arrival at new destination consignee could not be located and complainant did not give delivery instructions until after receipt of a second telegram. Delivery again not affected due to accrued demurrage and car was towed across the river and subsequently towed back and delivered. *Held*: Demurrage and towage charges not unreasonable or otherwise unlawful. *Currie & Campbell v. Director General*, 450.

Bill of lading contained instructions as to party to be notified at reconsignment point together with notation "to be reconsigned to Lansing" but did not name party to whom notice should be sent at the latter point. Carrier reconsigned the shipment to ultimate destination where demurrage accrued. *Held*: Carrier at fault in accepting and moving the shipment under ambiguous instructions contained in the bill of lading and demurrage charges illegally assessed. Reparation awarded. *Gill-Andrews Lumber Co. v. Director General*, 493.

Demurrage charges collected for detention of a car which never moved from point of origin because of an embargo at billed destination, and subsequently unloaded, not found unjust or otherwise unlawful. *Atlantic Refining Co. v. Director General*, 627.

DENSITY OF TRAFFIC. See also SPARSITY OF TRAFFIC.

Value and density are important considerations in determining ratings of commodities but they must be used in conjunction with the other elements of classification. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (209).

DEPRESSED RATES.

The fixing of maximum rates at intermediate points in fourth section proceedings can not be considered as a finding that such rates are maximum reasonable rates when considered apart from the depressed rates to the competitive points. While rates prescribed in such proceedings should be given due weight they are not controlling. *Mobile Chamber of Commerce v. Director General*, as Agent, 605 (609); *Montgomery Chamber of Commerce v. Director General*, 610 (619).

DESIRABILITY OF TRAFFIC.

Sugar recognized from a transportation standpoint as among the most attractive commodities which move in heavy volume. It loads heavily, yields per car-mile revenue in excess of most other tonnage, requires no special equipment, and needs no expedited or special service. *Montgomery Chamber of Commerce v. Director General*, 610 (617).

DETENTION. *See DEMURRAGE.*DIFFERENTIAL. *See also ARBITRARIES.*

Commodity rates on glass bottles from Huntington, W. Va., to eastern cities found unduly prejudicial to extent they exceed the rates in effect from Charleston, W. Va., by more than 3 per cent of the Chicago-New York rate. *Jobbers' & Mfrs.' Bureau of Huntington v. A. C. R. R. Co.*, 64 (76).

All-rail rates on clean rice from Beaumont, Orange, Galveston, and Houston, Tex., to eastern seaboard territory not found unreasonable but found unduly prejudicial to extent they exceed by more than 20 cents per 100 pounds the all-rail rates in effect from New Orleans, La., to same destinations. *Beaumont Chamber of Commerce v. A. & V. Ry. Co.*, 189.

Rates on iron and steel articles from Minnequa, Colo., to Pacific coast points, based upon a flat differential under the Chicago rates found unduly prejudicial to extent they exceed 77 per cent of the rates from Chicago to same destinations. *Colorado Fuel & Iron Co. v. Director General*, 253.

Rates on refined petroleum products in tank-car loads from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unjust and unreasonable to extent they exceed by more than 3 cents per 100 pounds the rates on like traffic from the same points to Chicago, Ill. *Wadhams Oil Co. v. Director General*, as Agent, 597 (602).

Rates on heavy oils in tank-car loads from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unjust and unreasonable to extent they exceed 5 cents less than rates on refined oils. *Id.* (602).

Rates on heavy oils from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unreasonable to extent they exceeded 25 cents per 100 pounds, or a differential of 5 cents higher than the rate to Chicago, Ill., no justification being shown for any greater differential for application in connection with the lower rates on heavy oils than on refined oils. *Reparation awarded. Id.* (603).

Owing to the short haul on coal from mines in Illinois and Indiana, the volume of the rate to East St. Louis, Ill., held to be insufficient, without an undue depletion of line-haul revenues, to require the absorption of the differential of 20 cents to St. Louis, Mo., which is the charge of the Terminal R. R. Asso. of St. Louis for the transfer across its Mississippi River bridges and ferries and its delivery in St. Louis. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (647).

Reason stated why Commission has recognized propriety of differentials between contiguous points on long and short haul traffic. *Id.* (647).

The relationship of rates on coal from Illinois and Indiana mines, under which the rate to St. Louis, Mo., is 20 cents higher than to East St. Louis, Ill., held not to be improper, as East St. Louis, due to its location a short distance from the coal deposits, and on the near side of the Mississippi River, is entitled, within the reasonable limits of rate making, to the benefits of that location. *Id.* (651).

DIRECTOR GENERAL. *See* FEDERAL CONTROL ACT.

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES.

Where transportation conditions are substantially similar, the Commission has never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over its competitor located at the latter. *Cornell v. L. V. R. R. Co.*, 157 (161).

DISTANCE RATES.

Commodity rates on citrus fruits, bananas, pineapples, and coconuts from New Orleans, La., and Mobile, Ala., to points in Arkansas should be readjusted to afford greater recognition to relative distances. Reasonable scale prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (237).

Combination rates legally applicable on hogs from certain points to Camp Pike and Carbell Spur, Ark., and from Camp Pike and Carbell Spur to other destinations, constructed by adding to the Dalhoff-Camp Pike local rates, the rates to and from Dalhoff, higher than joint distance scale of rates in effect from points in Arkansas to points in Oklahoma, and from points in Texas to points in Arkansas, under the tariff of which Camp Pike and Carbell Spur are not included, not found unreasonable or unduly prejudicial. *Caron & Campbell v. Director General*, as Agent, 474.

Statement of present class rates between North and South Carolina points as compared with present rates between various points, including rates established or not found unreasonable by the Commission, for comparable distances. *Corporation Commission of North Carolina v. Director General*, 523 (529-530).

DISTURBANCE OF ADJUSTMENT.

In the absence of proof of tangible injury to complainant or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. *Phelps Dodge Corp. v. Director General*, 714 (720).

A shipper is entitled to transportation at reasonable rates and an unreasonable rate can not be permitted to stand merely because if readjusted other rate adjustments may follow. *Id.* (721).

DIVERSION. *See also* RECONSIGNMENT.

Change of destination in transit of certain cars of bituminous coal on orders of United States Fuel Administration found to have constituted a diversion, as it is a common incident of diversion or reconsignment that instructions for the change in destination, routing, or consignee, be given by some one other than original shipper, especially where the property is moving under order bills of lading. *Du Pont de Nemours & Co. v. Director General*, 461 (463).

Where contents of car remain unchanged, change of destination or route does not necessitate an out-of-line haul, and request is made in reasonable time, reconsignment and diversion on basis of through rate from point of origin to new destination, with a fair charge for extra services performed, are reasonable practices. Denial thereof is unreasonable and unlawful and the Commission has power to require their establishment. *Id.* (463).

DIVERSION—Continued.

Defendant's diversion rules in so far as excluding bituminous coal in hopper or self-clearing cars, found unreasonable at time of movement to extent that charges thereunder exceeded those on basis of a rule providing for diversion from point of origin to final destination at through rates plus a diversion charge of \$2. Reparation awarded. *Id.* (464).

Combination rates assessed on shipments of bituminous coal from West Virginia mines, originally consigned to the Reading R. R., but held at Rutherford, Pa., and diverted by the U. S. Fuel Administrator to Coatesville, Pa., not found unreasonable. Although lower joint rate applied via the customary route through Elamere Junction, Del., defendants were in no way responsible for the routing of these shipments which moved over the only practical route from the diversion point. *Lukens Steel Co. v. Director General*, 621.

Initial carrier failed to divert shipment to point specified by shipper, where it later arrived. *Held*: Routing instructions violated, but no damage resulted, as same rate applied via route of movement as over route specified. *Lowry Lumber Co. v. Director General*, 623.

DOMESTIC RATES. See **IMPORT AND DOMESTIC RATES.**

DOUBLE INCREASE.

Combination rate, both factors of which were increased by Director General under General Order No. 28, found unreasonable to extent it exceeded lower joint commodity rate subsequently established. Reparation awarded. *New Jersey Power & Light Co. v. Director General*, 147.

Combination rates on anthracite coal from certain points in Pennsylvania to destinations in Iowa, Kansas, Missouri, and Nebraska, both factors of which were increased by the Director General, not found unreasonable or unduly prejudicial. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 739.

DUTY OF CARRIER.

It is the duty of carriers to afford equal opportunity to all who desire to employ their services and the fact that a town is small and not well equipped to care for particular commodities does not relieve them of that duty. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (236).

The duty resting upon carriers to furnish cars to shippers upon reasonable request is not absolute. *Armour Grain Co. v. Director General*, 398 (403).

It is the duty of a carrier to issue a bill of lading free from ambiguity or uncertainty. *Gill-Andrews Lumber Co. v. Director General*, 493 (494).

A carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (681).

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, setting forth duty of carriers relative to distribution of cars and maintenance of just and reasonable mine ratings, quoted. *Assignment of Freight Cars*, 760 (765).

DUTY OF COMMISSION.

It is the Commission's duty to prescribe rates that meet the tests of the law. *Inland Steel Co. v. Director General*, 339 (341).

Section 5 of the act charges the Commission only with the duty of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this weight must be given to actual conditions at the present time. *Application of United States Steel Products Co.*, 513 (516).

DUTY OF COMMISSION—Continued.

Objection to establishment of local rates to Galveston, Tex., on ground that smelter products might be moved on the basis of those rates to that point and sent forward in privately owned or chartered bottoms, thereby enabling shippers to avoid payment of the through rates via all-rail and rail-and-water routes, can not be seriously considered, for shippers are entitled to reasonable rates and it is the Commission's duty to require an adjustment that shall be consonant with the provisions of the law. *Anaconda Copper Mining Co. v. Director General*, 723 (733).

DUTY OF SHIPPER.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance with tariff rules affords no basis for a finding that the rate legally applicable is unreasonable or unlawful, or for authorizing a waiver of their observance. *United Verde Extension Mining Co. v. Director General*, 483 (484).

EARNINGS. See also TON-MILE REVENUE.

Comparisons of car-mile and ton-mile tests have been of much value in many cases, but they must be considered in the light of all the circumstances and conditions and are of controlling force only when those circumstances and conditions are substantially similar. *Phelps Dodge Corp. v. Director General*, 714 (717).

Value is an essential factor of a reasonable rate but is only one of the elements that must be considered. Other elemental tests must be applied of which a comparison of revenue under the rates attacked with revenue derived from the transportation of other commodities under similar circumstances and conditions is one of considerable importance. *Anaconda Copper Mining Co. v. Director General*, 723 (731, 732).

ELECTRIC LINE.

Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for proposed increased rates on newspapers transported in passenger cars between stations on the Kansas City, Kaw Valley & Western Ry. *Newspapers on Passenger Cars*, 743.

EMBARGO.

Following *Wood Case*, 53 I. C. C., 183, demurrage charges on cars held at a reconsignment point because of embargoes at points to which diversion was ordered, found illegal as tariffs contained no provision against reconsignment to embargoed points. Reparation awarded. *Atlantic Lumber Co. v. N. Y., P. & N. R. R. Co.*, 129; *Trantum & Danzer (Inc.) v. N. Y., P. & N. R. R. Co.*, 281.

Complainant erroneously informed by connecting carrier that billed destination not embargoed. Initial carrier accepted shipment and switched same to connecting line, where refused and returned to complainant who was then notified of embargo. *Held*: Demurrage accruing after receipt of advice that car could not move in accordance with instructions, legally assessed as duty devolved upon complainant to abate demurrage by unloading within free time. *Cleveland Cooperage Co. v. Director General*, 423.

Although placed by reason of a carrier's disability, demurrage may properly be assessed for a detention for which the shipper is directly responsible and which he can avoid or abate. *Id.* (425).

EMBARGO—Continued.

Embargo in effect at billed destination. Car reconsigned but complainant failed to request change in name of consignee. Upon arrival at new destination consignee could not be located and complainant did not give delivery instructions until after receipt of a second telegram. Delivery again not affected due to accrued demurrage and car was towed across the river and subsequently towed back and delivered. *Held*: Demurrage and towage charges not unreasonable or otherwise unlawful. *Currie & Campbell v. Director General*, 450.

Route beyond compression point, over which tariff provided for refund of inbound freight charges if shipments forwarded outbound within 12 months, embargoed. Although no instructions for reshipment given, carrier forwarded via route over which this provision did not apply. *Held*: Shipments misrouted and reparation awarded. *Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co.*, 486.

Demurrage charges collected for detention of a car which never moved from point of origin because of an embargo at billed destination, and which was subsequently unloaded, not found unjust or otherwise unlawful. *Atlantic Refining Co. v. Director General*, 627.

EMERGENCY.

The passing of the roads from federal control and the suspension of the operation of the Fuel Administration's rules, together with the transportation conditions and shortage of fuel on hand, created an emergency in which the Commission acted in accordance with its best judgment. Assignment of Freight Cars, 760 (766).

EQUALIZING MANUFACTURING COSTS.

Carriers can not undertake to equalize manufacturing costs through the adjustment of freight rates. *Anaconda Copper Mining Co. v. Director General*, 723 (732).

EQUALIZING RATES.

Ocean rates are generally not published and are subject to fluctuations. Therefore an equalization based on such rates by no means constitutes a permanent basis upon which to construct rail rates to the ports. Unless the process of equalization rests upon substantial, fairly permanent, and controlling facts and natural relationships, it can not be proper and lawful. *Inland Steel Co. v. Director General*, 339 (340).

ERROR.

Complainant erroneously informed by connecting carrier that billed destination not embargoed. Initial carrier accepted shipment and switched same to connecting line where refused and returned to complainant who was then notified of embargo. *Held*: Demurrage accruing after receipt of advice that car could not move in accordance with instructions, legally assessed as duty devolved upon complainant to abate demurrage by unloading within free time. *Cleveland Cooperage Co. v. Director General*, 423.

Erroneous information given by carrier's agent affords no basis for relief from the Commission in support of a claim against that carrier. *Id.* (425).

Complainant loaded first car to visible capacity, and forwarded shipments under separate bills of lading, but failed to comply with tariff requirements or make cross reference to the separate shipments in the actual billing which would indicate that commodities were offered as a single shipment. *Held*: Follow-lot rule not applicable and charges legally applicable not found unreasonable. *United Verde Extension Mining Co. v. Director General*, 483.

ERROR—Continued.

Rate on cypress lumber increased 1 cent following *Fifteen Per Cent Case*, 45 I. C. C., 303, but order in that case did not authorize any increase and joint rate subsequently reduced 1 cent. Reparation awarded on basis of rate subsequently established. *Pine Plume Lumber Co. v. Director General, as Agent*, 501.

Initial carrier failed to divert shipment to point specified by shipper, where it later arrived. *Held*: Routing instructions violated but no damage resulted as same rate applied via route of movement as over route specified. *Lowry Lumber Co. v. Director General*, 623.

EVIDENCE.

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate is important evidence that the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (682-683).

EXPORT RATES.

Upon further hearing, original report, 32 I. C. C., 272, modified and adjustment of rates on cotton from various points in Alabama and Georgia to Mobile, Ala., and Savannah, Ga., for export found unduly prejudicial to Mobile and unduly preferential of Savannah in some instances and not in others. Reasonable relationship prescribed. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 554.

EXPORT SHIPMENT.

Carload rates on portable railway tracks, in sections, for export found unreasonable to extent they exceeded rates on fishplates, switches, turntables, and crossovers, in carloads. Reparation awarded. *Lakewood Engineering Co. v. Director General*, 311.

Former finding, 55 I. C. C., 462, that rates on iron and steel articles from Chicago, Ill., Terre Haute and Vincennes, Ind., to Pacific coast ports, for export, were not unduly prejudicial in favor of Pittsburgh, Pa., reversed on reargument. *Inland Steel Co. v. Director General*, 339.

EXPRESS COMPANY.

Operating wholly within Canada not within the Commission's jurisdiction. *White Bros. & Crum Co. v. Director General*, 511 (512).

EXPRESS RATES.

On cherries from Lewiston, Idaho, and Union, Oreg., to Regina, Saskatchewan, Canada, exceeded the aggregate of intermediate rates to and from Spokane, Wash. Reparation awarded. *White Bros. & Crum Co. v. Director General*, 511.

FACTOR. See also PROPORTIONAL RATES.

One factor of through rate canceled prior to movement and higher combination rate than charged legally applicable. *Held*: Shipment undercharged and rate legally applicable not shown unreasonable due to sparsity of traffic and unfavorable and expensive operating conditions in the territory involved. *Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co.*, 39.

One factor of combination rate legally applicable reduced subsequent to movement. *Held*: Rate legally applicable unreasonable to extent it exceeded lower joint rate subsequently established. Reparation awarded. *Koenig Coal Co. v. G. T. Ry. Co.*, 241.

FACTOR—Continued.

Combination rate legally applicable, one factor of which was subsequently reduced, not found unreasonable or otherwise unlawful. *Whitehouse Barrel Co. v. Director General*, 753.

FARES. See PASSENGER FARES.**FEDERAL CONTROL ACT.**

Short line formerly under federal control and subsequently relinquished. *P., A. & McK. R. R. Co. v. Director General*, 1 (2).

Tariff rule initiated by Director General providing for minimum weights on intrastate shipments of lignite, based upon marked capacity of car, found unreasonable, and rule subsequently established, under which marked capacity of car, except where loaded to full visible capacity, in which event actual weight will govern, found to be a reasonable rule. *San Antonio Freight Bureau v. Director General*, 45.

By section 10 of, authority to determine the justness and reasonableness of tariff rule initiated by President through the Director General, and to award reparation on intrastate shipments moving thereunder is vested in the Commission. *Id.* (46).

Combination rate, both factors of which were increased by the Director General under General Order No. 28, found unreasonable to extent it exceeded lower joint commodity rate subsequently established. Reparation awarded. *New Jersey Power & Light Co. v. Director General*, 147.

The Commission's jurisdiction to award reparation on intrastate shipments is confined to the period of federal control. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (275).

State rates on copper ore and on lime rock, increased under General Order No. 28 specified amounts per ton, aggregating increases in excess of 25 per cent, not found unreasonable or otherwise unlawful. *Calumet & Arizona Mining Co. v. Director General*, 332.

Duty of determining the justness and reasonableness of intrastate rates initiated by the Director General is upon the Commission. *Id.* (333).

Complainants having failed to name carriers over whose lines rates applied as parties defendant in addition to the Director General, although opportunity afforded, no order for the future entered. *Inland Steel Co. v. Director General*, 339 (342).

No order for the filing of rates with the Commission by the President as a condition precedent to the lawful initiation thereof is required by the federal control act. *Anaconda Copper Mining Co. v. Director General*, 723 (726).

Rates attacked as unlawful by reason of alleged failure to observe terms of General Order No. 28, were filed with the Commission by the President through his duly appointed agent, and a failure to adhere strictly to the terms of a preliminary order of the Director General, which is not required by the federal control act, and in the absence of which complainant's contention would be without foundation, can not be construed as defeating the validity of the rates concerned. *Id.* (726).

A *prima facie* presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of its reasonableness, and certainly the existence of a lower rate in the past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove of value in ascertaining the reasonableness of rates in force during the period of federal control. *Id.* (729).

FEDERAL CONTROL ACT—Continued.

Rates on smelter products, from points in Arizona and Texas, to Galveston, Tex., increased on June 25, 1918, by the Director General, found unreasonable and reasonable maximum interstate rates prescribed. *Id.* (735).

Combination rates on anthracite coal from certain points in Pennsylvania to destinations in Iowa, Kansas, Missouri, and Nebraska, both factors of which were increased by the Director General, not found unreasonable or unduly prejudicial. *National Supply Co. v. C. & St. P. Ry. Co.*, 739.

Import rate canceled by Director General and rate equal to domestic commodity rate established. Subsequently import rate reduced below level of domestic rate. Contention that import rate equal to domestic rate was unreasonable to extent it exceeded lower rate subsequently established, based on fact that it has been customary for import rates to be upon a lower scale than domestic rates, not sustained. *Frost & Co. v. Director General*, as Agent, 755 (756).

The passing of the roads from federal control and the suspension of the operation of the Fuel Administration's rules, together with the transportation conditions and shortage of fuel on hand, created an emergency in which the Commission acted in accordance with its best judgment. Assignment of Freight Cars, 760 (766).

FERRY CAR CHARGES.

On traffic originating at points west of Groton, Conn., for delivery to complainant's plant at that point, rule required that shipments be billed to Midway, Conn., for delivery via ferry extension, necessitating a back haul from Midway to Groton. *Held*: Charges, in so far as they exceed by more than \$3 per car the charges on like traffic delivered in Groton proper, found unduly prejudicial. *Groton Iron Works v. N. Y., N. H. & H. R. R. Co.*, 704.

FILING RATES.

No order for the filing of rates with the Commission by the President as a condition precedent to the lawful initiation thereof is required by the federal control act. *Anaconda Copper Mining Co. v. Director General*, 723 (726).

Rates attacked as unlawful by reason of alleged failure to observe terms of General Order No. 28 were filed with the Commission by the President, through his duly appointed agent, and a failure to adhere strictly to the terms of a preliminary order of the Director General, which is not required by the federal control act, and in the absence of which complainant's contention would be without foundation, can not be construed as defeating the validity of the rates concerned. *Id.* (726).

FINANCIAL CONDITIONS.

Unfavorable, of a defendant can not be lawfully remedied by the imposition of unreasonable rates, and a favorable financial condition can not lawfully be made the basis for rates that are noncompensatory. *Phelps Dodge Corp. v. Director General*, 714 (718).

FINDINGS OF COMMISSION.

Objection entered at the hearing to the Commission's power to correct an error in its report or order except upon formal application for rehearing, but as defendant did not avail itself of opportunity afforded for filing brief in opposition to a correction of the Commission's former report, the objection held not well taken. *Dodson & Co. (Inc.) v. C. R. R. Co. of N. J.*, 381 (383).

FIXING RATES.

It is the Commission's duty to prescribe rates that meet the tests of the law. *Inland Steel Co. v. Director General*, 339 (341).

While rates ought not to be established upon the basis of a period of adverse conditions, so neither should they be fixed altogether with respect to recent years of comparative prosperity. *Phelps Dodge Corp. v. Director General*, 714 (718).

FLEXIBLE LIMIT OF JUDGMENT.

In the exercise of "that flexible limit of judgment which belongs to the power to fix rates," finding in former reports 39 I. C. C., 88, and 45 I. C. C., 248, denying reparation on precooled and preiced oranges from California points to destinations in other states and in Canada, reaffirmed on re-argument. *Arlington Heights Fruit Exchange v. S. P. Co.*, 580.

FLUCTUATIONS.

Ocean rates are generally not published and are subject to fluctuations. Therefore, an equalization based on such rates by no means constitutes a permanent basis upon which to construct rail rates to the ports. Unless the process of equalization rests upon substantial, fairly permanent, and controlling facts and natural relationships, it can not be proper and lawful. *Inland Steel Co. v. Director General*, 339 (340).

FOLLOW LOT.

Complainant loaded first car to visible capacity, and forwarded shipments under separate bills of lading, but failed to comply with tariff requirements or make cross reference to the separate shipments in the actual billing which would indicate that commodities were offered as a single shipment. *Held*: Follow-lot rule not applicable and charges legally applicable not found unreasonable. *United Verde Extension Mining Co. v. Director General*, 483.

FOOD ADMINISTRATION.

Prices were fixed by the Food Administration, and at no time and in no instance were they made or controlled, to complainant's detriment, by any competitor by virtue of the preferential rate herein found to exist. Reparation denied for want of proof. *Home Packing & Ice Co. v. Director General*, 691 (697).

FOREIGN COUNTRY. See also ADJACENT FOREIGN COUNTRY.

Following *Canales Case*, 37 I. C. C., 573, Commission no jurisdiction over shipments from adjacent foreign country, passing in bond through the United States, to another foreign country. *Quintal & Lynch (Ltd.) v. F. E. C. Ry. Co.*, 239 (290).

FUEL.

If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to railway fuel, as was done when priorities were issued by the President's priority agent during the war. *Assignment of Freight Cars*, 760 (766).

FUEL ADMINISTRATOR.

Change of destination in transit of certain cars of bituminous coal on orders of United States Fuel Administration found to have constituted a diversion, as it is a common incident of diversion or reconsignment that instructions for the change in destination, routing, or consignee be given by some one other than original shipper, especially where the property is moving under order bills of lading. *Du Pont De Nemours & Co. v. Director General*, 461 (463).

FUEL ADMINISTRATOR—Continued.

Combination rates assessed on bituminous coal, originally consigned to the Reading R. R., but held at Rutherford, Pa., and diverted by the U. S. Fuel Administrator to Coatesville, Pa., not found unreasonable. Although lower joint rate applied via the customary route through Elamere Junction, Del., defendants were in no way responsible for the routing of these shipments which moved over the only practical route from the diversion point. *Lukens Steel Co. v. Director General*, 621.

The rule of law as to distribution of cars in accordance with the relative ratings of the mines as set forth in the *Traer Case*, 13 I. C. C., 451, and sustained by the Supreme Court in 215 U. S., 452 and 479, remained the controlling rule until during the war and under the rules of the Fuel Administration, when the use of assigned cars was abandoned, followed by the imperative necessity of railroads confiscating coal in transit in order to keep their roads in operation. *Assignment of Freight Cars*, 760 (763).

The passing of the roads from federal control and the suspension of the operation of the Fuel Administration's rules, together with the transportation conditions and shortage of fuel on hand, created an emergency in which the Commission acted in accordance with its best judgment. *Id.* (766).

FULL VISIBLE CAPACITY. See also MINIMUM WEIGHT.

Charges on basis of minimum weight of 36,000 pounds in lieu of actual weight, on potatoes loaded to full visible capacity but less than applicable minimum, not found unreasonable. *Northern Potato Traffic Asso. v. C., B. & Q. R. R. Co.*, 385.

While provision for assessment of charges based on actual weight of shipments loaded to full visible capacity is proper where it may be determined by casual inspection, it would be highly improper in connection with potato shipments, for to leave the interpretation of such a provision to local agents would result in confusion and open the door to unlimited discriminations and preferences. *Id.* (388).

GROUP RATES. See also BLANKET RATES.

State and interstate rates on coal from Colliery, Ill., a point in the Springfield group, to interstate destinations found unduly prejudicial to extent they exceed the rates from other points in the same group to same destinations. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (280).

There is no requirement of law that origin and destination groups shall be coextensive in area. In the adjustment of transcontinental rates it may be said to be the usual practice for origin group rates to apply to destination points singly or grouped only a few together. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (648).

In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. *Phelps Dodge Corp. v. Director General*, 714 (720).

In the absence of proof of tangible injury to complainant or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. *Id.* (720).

HOPPER CARS.

Defendant's diversion rules in so far as excluding bituminous coal in hopper or self-clearing cars, found unreasonable at time of movement to extent that charges thereunder exceeded those on basis of a rule providing for diversion from point of origin to final destination at through rates plus a diversion charge of \$2. Reparation awarded. *Du Pont De Nemours & Co. v. Director General*, 461 (464).

IMPORT AND DOMESTIC.

Domestic fifth-class rate on imported soya-bean oil from Seattle, Wash., to Babbitt, N. J., exceeded import commodity rate legally applicable. Shipments overcharged and reparation awarded. *Frost & Co. v. Director General*, as Agent, 755.

Import rate cancelled by Director General and rate equal to domestic commodity rate established. Subsequently import rate reduced below level of domestic rate. Contention that import rate equal to domestic rate was unreasonable to extent it exceeded lower rate subsequently established, based on fact that it has been customary for import rates to be upon a lower scale than domestic rates, not sustained. *Id.* (756).

IMPORT RATES.

Due to dissatisfaction from establishment of same import rate on copra and coconut oil from Pacific coast ports to eastern destinations, Director General reduced the rate on copra to 85 cents and on coconut oil to 90 cents. Reparation awarded on shipments of copra on basis of rates subsequently established. *Procter & Gamble Co. v. Director General*, as Agent, 465.

IMPORTS.

Rates on imported nitrate of soda from north Atlantic ports to Hegewisch, Ill., and Willow and Ivorydale, Ohio, found unreasonable to extent they exceed, from New York to Hegewisch 33 cents per 100 pounds; from New York to Willow, from Philadelphia and Baltimore to Hegewisch and Willow, and from Baltimore to Ivorydale, specified percentages of the New York-Hegewisch rates, less the regular port differentials. Reparation awarded. *General Chemical Co. v. Director General*, 222.

INBOUND AND OUTBOUND.

Impossible under the present system of rate making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in common markets. *Ft. Dodge Commercial Club v. Director General*, 343 (345).

During period of car shortage complainant unable to obtain sufficient cars at congested grain elevators for outbound movement. Rules governing assessment of demurrage on grain shipped into transit points on local billing and there held for unloading into elevators, not shown unreasonable or unduly prejudicial. *Armour Grain Co. v. Director General*, 398.

To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way to abuses not necessary in order to protect a shipper from unlawful acts of the carrier. *Id.* (404).

In times of car shortage, the failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments. *Id.* (408).

INBOUND AND OUTBOUND—Continued.

Route beyond compression point, over which tariff provided for refund of inbound freight charges if shipments forwarded outbound within 12 months, embargoed. Although no instructions for reshipment given, carrier forwarded via route over which this provision did not apply. *Held*: Shipments misrouted and reparation awarded. Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co., 486.

INCREASED RATES. *See* ADVANCE IN RATES; DOUBLE INCREASE.

INDIRECT ROUTE. *See* CIRCUITOUS ROUTE.

INDUSTRIAL SWITCHING. *See* SWITCHING.

INJUNCTION.

No violation of the act to regulate commerce or the federal control act can be predicated upon the proposed action of the Director General or the carriers, and the statutes make no provision for the issuance by the Commission of injunctions or other like writs. Anaconda Copper Mining Co. v. Director General, 723 (724).

INTERCHANGE SWITCHING. *See* SWITCHING.

INTERCORPORATE RELATIONSHIPS.

The ownership by the U. S. Steel Corporation of the stock of both the U. S. Steel Products Co., and the several applicant rail carriers, held to constitute an interest within the meaning of section 5 of the act, by rail lines in water carriers owned and operated by the Products Company. Application of United States Steel Products Co., 513 (515).

INTERMEDIATE POINT.

Following *Este Co.*, 34 I. C. C., 469, and *Tresler Lumber Co.*, 49 I. C. C., 121, demurrage charges unlawfully collected on shipments specifically routed but held at a point short of billed destination by carrier's agent, who failed to turn the shipments over to the delivering carrier as specified in the bill of lading. *Texas Co. v. Director General*, 48.

INTERVENERS.

The filing of an intervening petition tolls the statute of limitations irrespective of the date of the Commission's order permitting the intervention. *Cotton Manufacturers' Asso. of S. C. v. C. & O. Ry.*, 584 (588). Reparation awarded certain interveners upon shipments of coal moving at rates found unreasonable in supplemental report, 53 I. C. C., 741. *Id.* (589).

Amending of complaint for reparation by permitting intervention of parties who paid and bore the freight charges had no effect and claim of interveners barred as they were not joined as parties complainant within the statutory period. *Oden & Elliott v. S. A. L. Ry. Co.*, 698 (699).

INTRASTATE RATES. *See* STATE RATES.

ISSUE.

Contention that complainant is entitled to settlement with purchaser of cross-ties, when sold under contract calling for delivery f. o. b. Louisville, Ky., upon basis of divisions of the joint rates accruing to lines south of Louisville, which would be lower than the local rates to that point, *Held*: Not within scope of the complaint or the Commission's jurisdiction. *Wright Tie Co. v. B. S. W. R. R. Co.*, 286 (288).

Whether complainant had or had not a specific contract with the carrier for delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages, raises an issue not before the Commission or within its jurisdiction to decide. *Armour Grain Co. v. Director General*, 398 (409).

JOBBER'S RATES.

Impossible under the present system of rate-making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in common markets. *Ft. Dodge Commercial Club v. Director General*, 343 (345).

JOINT RATES.

The publication of tariffs carrying joint rates, which will be used only under rare or exceptional circumstances, should not be required, particularly where combination rates via the routes over which specific joint through rates are sought are readily available. *Beaumont Chamber of Commerce v. A. & V. Ry. Co.*, 189 (194).

JUNK.

Cracked press bed of an embossing machine not found entitled to scrap-iron rate, as the bed had not reached the stage of being "scraps or pieces of iron or steel of value for remelting purposes only," as contemplated by the tariff description of scrap iron. Fifth-class l. c. l. rate applicable to machinery assessed not found illegal or otherwise unlawful. *Griess-Pfleger Tanning Co. v. Director General*, as Agent, 499.

JURISDICTION.

The Commission is without power to order refund of war taxes. *San Antonio Freight Bureau v. Director General*, 45 (47); *Akin Gasoline Co. v. Director General*, 133 (135); *New Jersey Power & Light Co. v. Director General*, 147 (148); *General Chemical Co. v. Director General*, 222 (226); *Koenig Coal Co. v. G. T. Ry. Co.*, 241 (243); *Boldt Co. v. Director General*, 259 (263); *Woodbury Lumber Co. v. Director General*, 324 (326); *Bare Paper Co. v. Director General*, 329 (331); *Kilmer & Co. (Inc.) v. Director General*, as Agent, 453 (454); *Du Pont De Nemours & Co. v. Director General*, 461 (464); *Procter & Gamble Co. v. Director General*, as Agent, 465 (470); *Ozark Cooperage & Lumber Co. v. Director General*, 471 (473); *United Verde Extension Mining Co. v. Director General*, 483 (485); *Lesser-Goldman Cotton Co. v. L. & N. W. R. Co.*, 486 (488); *St. Bernard Cypress Co. v. Director General*, as Agent, 489 (490); *Philadelphia Quartz Co. v. Director General*, as Agent, 632 (634); *Rudy-Patrick Seed Co. v. Director General*, as Agent, 637 (638); *Congoleum Co. v. Director General*, as Agent, 757 (759).

By section 10 of the federal control act, authority to determine the justice and reasonableness of a tariff rule initiated by the President through the Director General, and to award reparation on intrastate shipments moving thereunder is vested in the Commission. *San Antonio Freight Bureau v. Director General*, 45 (46).

Of Commission to award reparation on intrastate shipments is confined to the period of federal control. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (275).

Contention that complainant is entitled to settlement with purchaser of cross-ties, when sold under contract calling for delivery f. o. b. Louisville, Ky., upon basis of divisions of the joint rates accruing to lines south of Louisville, which would be lower than the local rates to that point, *Held*: Not within scope of the complaint or the Commission's jurisdiction. *Wright Tie Co. v. B. S. W. R. R. Co.*, 286 (288).

JURISDICTION—Continued.

Following *Canales Case*, 37 I. C. C., 573, Commission no jurisdiction over shipments from adjacent foreign country, passing in bond through the United States to another foreign country. *Quintal & Lynch (Ltd.) v. F. E. C. Ry. Co.*, 289 (290).

Following *Northern Pacific Ry. Co. v. Solum*, 247 U. S., 477, the reasonableness of a particular routing of traffic as between two routes, one interstate and one intrastate, is an administrative question whose determination is within the Commission's jurisdiction. *Woodbury Lumber Co. v. Director General*, 324 (325).

Contention that Commission is without jurisdiction to award reparation on misrouted shipment moving through Canada, where lower rate applied via an intrastate route, not sustained. *Id.* (325).

Duty of determining the justness and reasonableness of intrastate rates initiated by the Director General is upon the Commission. *Calumet & Arizona Mining Co. v. Director General*, 332 (333).

Determination of question of payment of divisions to short lines by trunk lines in violation of commodities clause does not come within Commission's administrative functions, and is more appropriately a matter for the courts. *St. Louis, Troy & Eastern R. R. Co.*, 371 (374).

Whether complainant had or had not a specific contract with the carrier for delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages, raises an issue not before the Commission or within its jurisdiction to decide. *Armour Grain Co. v. Director General*, 398 (400).

The Commission does not conceive it within its discretion to adjust zone boundaries with purpose of providing a community with fast or slow time, as intent of Congress has been evidenced by the repeal of the daylight savings section of the act. *Standard Time Zone Investigation*, 455 (458).

Where contents of car remain unchanged, change of destination or route does not necessitate an out-of-line haul, and request is made in reasonable time, reconsignment and diversion on basis of through rate from point of origin to new destination, with a fair charge for extra services performed, are reasonable practices. Denial thereof is unreasonable and unlawful and the Commission has power to require their establishment. *Du Pont De Nemours & Co. v. Director General*, 461 (463).

Express company operating wholly within Canada not within the Commission's jurisdiction. *White Bros. & Crum Co. v. Director General*, 511 (512).

Clause of section 1 of the act which defines transportation as including terminal delivery is jurisdictional, and does not affect the measure of the rate or relationship of rates, for the terminal service is included within the transportation. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (653).

As section 206 (f) of the transportation act, 1920, provides that the period of federal control shall not be computed as part of the period of limitation in claims for reparation for causes of action arising prior to federal control, claims covering shipments moving more than two years prior to the filing of complaint are within the Commission's jurisdiction. *Thomas Iron Co. v. Director General, as Agent*, 657.

JURISDICTION—Continued.

Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of c. l. traffic. As the magnitude of the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (683).

No violation of the act to regulate commerce or the federal control act can be predicated upon the proposed action of the Director General or the carriers, and the statutes make no provision for the issuance by the Commission of injunctions or other like writs. *Anaconda Copper Mining Co. v. Director General*, 728 (724).

Portion of lake-and-rail rates accruing to water-carriers not subject to the Commission's jurisdiction. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 739 (741).

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, setting forth authority of the Commission to suspend operation of car service rules, and to make just and reasonable directions with respect thereto. Assignment of freight cars, 760 (765).

KNOCKED DOWN. See SET UP AND KNOCKED DOWN.

LA SALLE & BUREAU COUNTY RAILROAD.

Found to be a common carrier. *Matthlessen & Hegeler Zinc Co. v. C., B. & Q. R. R. Co.*, 173 (176).

LABOR.

Service of loading waste paper stock, provided for in tariffs, was not rendered due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. *Held*: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload, outweighed expense of loading with their own employees, for which service there was no obligation on part of carriers to make an allowance. *Waste Merchants Asso. v. Director General*, 686.

LAKE-AND-RAIL.

Portion of the lake-and-rail rates accruing to the water carriers was not and is not subject to the Commission's jurisdiction. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 739 (741).

LEGAL RATES.

Rate legally applicable on crude sulphur from Bryanmound, Tex., to Thompson's Point, N. J., not found unreasonable or unduly prejudicial following *Du Pont De Nemours & Co.*, 58 I. C. C., 334. Shipments found overcharged and refund directed. *Du Pont De Nemours & Co. v. Director General*, 507.

Conflicting rates named in separate tariffs but lower rates did not cancel or in any way refer to rates originally published in individual tariffs. *Held*: Higher rates originally published assessed found legally applicable and not unreasonable or otherwise unlawful. *Highland Iron & Steel Co. v. Director General*, as Agent, 547.

Where conflicting rates are named in separate tariffs the rate first established is the legal rate, upon the principle that lawfully established rates remain in effect until specifically canceled. *Id.* (548).

Domestic fifth-class rate on imported soya-bean oil from Seattle, Wash., to Babbitt, N. J., found illegal to extent it exceeded import commodity rate legally applicable. Shipments found overcharged and reparation awarded. *Frost & Co. v. Director General, as Agent*, 755.

Complainant requested that shipment be check-weighed at destination but delivery effected before letter received by the carrier. Charges were based on weight registered by track scales of initial carrier at intermediate point. Contention that charges should have been assessed on estimated weight, not sustained. Lowry Lumber Co. v. Director General, as Agent, 635.

Carriers constituting a through route for traffic from a point in the United States to a point in Canada, concurring in a joint rate which is unreasonably high, are jointly and severally responsible for the damage which results to any shipper on account of such unlawful rate. *White Bros. & Crum Co. v. Director General*, 511 (512).

The filing of an intervening petition tolls the statute of limitations irrespective of the date of the Commission's order permitting the intervention. Cotton Manufacturers' Asso. of S. C. v. C., C. & O. Ry., 584 (588).

As section 206 (f) of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control, claims covering shipments moving more than two years prior to the filing of complaint are within the Commission's jurisdiction. *Thomas Iron Co. v. Director General*, 657.

Original complaint brought to recover reparation for account of complainant only, and not as agent for vendors. Amending of complaint by permitting intervention of the latter who paid and bore the freight charges can have no effect, as they were not joined as parties complainant within the statutory period. Interveners claim for reparation found barred. *Oden & Elliott v. S. A. L. Ry. Co.*, 698 (699).

Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive either team-track or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such industry, or that the line-haul rates are unreasonable or otherwise unlawful by the line-haul carrier on Virginia to, when the entire cost of the spotting service is performed by the States Cast Iron Pipe & Foundry Co. v. Director General, 677 (884).

Notwithstanding oral and written notice that repairs were to be made to trestles, complainant placed orders for coal in excess of normal requirements and cars reached the plants in excess of the facilities regularly available for unloading. *Held*: Demurrage accruing not unreasonable or unlawful and no negligence may be imputed to defendant who interfered as little as possible with facilities for receiving and unloading, and completed repairs with least possible delay. *Cumberland Glass Mfg. Co. v. Director General*, 439.

LOADING AND UNLOADING—Continued.

Because shippers voluntarily loaded cars in excess of the minimum loading requirements on which charge was based, it by no means follows that the higher charge with the lower minimum should be found to have been unreasonable. *Arlington Heights Fruit Exchange v. S. P. Co.*, 580 (582). Service of loading waste paper stock, provided for in tariffs, was not rendered due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. *Held*: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload, outweighed expense of loading with their own employees, for which service there was no obligation on part of carriers to make an allowance. *Waste Merchants Asso. v. Director General*, 686.

No alternate clause in tariffs provided for the payment of an allowance if shippers performed loading service, and since all allowances must be published in the tariffs, even if defendants desired, they could not lawfully have compensated complainants for loading service rendered by them. *Id.* (689).

LOCAL RATES. *See also* COMBINATION RATES.

On coarse grains from Cairo, Ill., to Monroe, La., not found unreasonable, but maintenance of lower proportional rates from Cairo to Rayville, La., found to subject Monroe to undue prejudice in favor of Rayville to extent that rate from Cairo, on traffic originating beyond, to Monroe, exceeds the rate to Rayville by more than 1.5 cents. *Monroe Chamber of Commerce v. Director General*, 227.

Proportional rates do not form a proper basis for measuring the reasonableness of local rates. *Id.* (228).

LOCATION. *See also* ADVANTAGES AND DISADVANTAGES.

Where transportation conditions are substantially similar, the Commission has never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over his competitor located at the latter. *Cornell v. L. V. R. R. Co.*, 157 (161).

In original report 55 I. C. C., 462, rates on iron and steel articles from Chicago, Ill., to Pacific coast ports, for export, not found unduly prejudicial in favor of Pittsburgh, Pa. Upon reargument former finding reversed as Chicago, due to its location nearer the Pacific coast, is entitled to a lower basis of rates. *Inland Steel Co. v. Director General*, 339.

Fort Dodge, Iowa, is at a geographical disadvantage because the Mississippi River does not flow straight north and south boundary line for the state of Iowa. *Commercial Club v. Director General*, 343 (345).

The relationship of rates on coal from Illinois and Indiana mines, under which the rate to St. Louis, Mo., is 20 cents higher than to East St. Louis, Ill., held not to be improper, as East St. Louis due to its location a short distance from the coal deposits, and on the near side of the Mississippi River, is entitled, within the reasonable limits of rate making, to the benefits of that location. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 689 (651).

LONG AND SHORT HAUL.

In General:

Where carrier competition is the only influence which has operated to reduce rates to a competitive point, the direct lines and those less than 15 per cent longer must observe the fourth section and not charge higher rates to intermediate points. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (240).

A violation of the fourth section of the act does not, without proof of damage, entitle the complainant to an award of reparation. *Illinois Brick Co. v. Director General*, 320 (323); *Union Tanning Co. v. Director General*, 354 (358); *Home Packing & Ice Co. v. Director General*, 691 (697).

The fixing of maximum rates at intermediate points in fourth section proceedings can not be considered as a finding that such rates are maximum reasonable rates when considered apart from the depressed rates to the competitive points. While rates prescribed in such proceedings should be given due weight they are not controlling. *Mobile Chamber of Commerce v. Director General, as Agent*, 605 (609); *Montgomery Chamber of Commerce v. Director General*, 610 (619).

Localities:

Arkansas points: Carriers whose routes are 15 per cent or more longer than the direct lines authorized to continue lower rates from New Orleans, La., and Mobile, Ala., to Little Rock and Pine Bluff, Ark., than to intermediate points in Arkansas. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (240).

Iowa points: Rates on common brick from points in Chicago switching district, and Shermerville, Ill., to grouped points in eastern Iowa on the Illinois Central and Milwaukee, not shown unreasonable or unduly prejudicial as compared with rates between points for comparable distances in the same general territory; but in certain instances found to violate the long-and-short-haul provision of section 4 of the act. Reparation denied. *Illinois Brick Co. v. Director General*, 320.

Michigan points: Applications to continue lower class and commodity rates between points in trunk-line territory and points on the west bank of Lake Michigan than to and from intermediate points in the 106 and 108 per cent groups in Michigan, granted provided that rates to and from the intermediate points conform to conclusions in *Michigan Percentage Cases*, 47 I. C. C., 409. Fourth Section Departures Lake Michigan Ports, 418.

Old Fort, N. C.: Rates on bituminous coal from the Appalachia group of mines in southwestern Virginia to, when moving through Marion, N. C., not found unreasonable as compared with lower rates maintained to Canton, N. C., a farther distant point. Fourth section departure without authority and should be corrected. *Union Tanning Co. v. Director General*, 354.

South Dakota points: Application seeking authority to continue rates on drain tile from Sioux City, Iowa, to Watertown, S. Dak., lower than on like traffic to intermediate points, denied. *Sioux City Concrete Pipe Co. v. C., M. & St. P. Ry. Co.*, 303 (307).

LONG AND SHORT HAUL—Continued.

Localities—Continued.

Terre Haute, Ind.: Applications seeking authority to continue rates on fresh meat, salted meat, and packing-house products, from St. Louis, Mo., and Indianapolis, Ind., to Chicago, Ill., lower than on like traffic from Terre Haute, and other intermediate points, denied. *Home Packing & Ice Co. v. Director General*, 691 (697).

LOSS AND DAMAGE.

The seriousness of the problem of waste brought about by loss and damage in transit is increasing rather than diminishing and anything that can be done to reduce such loss and damage is manifestly in the interest of carriers and public alike. *Pneumatic Scales Corp. v. A. & R. R. Co.*, 308 (309).

LOW RATES.

Fact that rates are too low is no justification for denial of a mixing provision. *Dickey Clay Mfg. Co. v. Director General*, as Agent, 459 (460).

Fact that there is a water route affording a low rate from a given point to a certain destination does not justify the Commission permitting the rail carrier to charge an unreasonable rate to that given point. *Anaconda Copper Mining Co. v. Director General*, 723 (733).

MAILED NOTICE.

Demurrage charges found to have been lawfully assessed as mailing of notice of arrival by defendant to consignee at address indicated on bill of lading was in full compliance with tariff requirements. *Lowry Lumber Co. v. Director General*, 139.

Notice of arrival mailed by defendant, but was not received by complainant. *Held*: Following *Ohio Iron & Metal Co.*, 34 I. C. C., 75, demurrage charges properly assessed, as carrier's duty was performed when notice was placed in the mail. *Eastern Lumber Co. v. Director General*, 272.

MARKET COMPETITION. *See* COMPETITION.

MEASURE OF RATE.

Carriers are entitled to reasonable compensation for their services, but fear that the consumer may not participate in prospective reductions in ratings is no valid objection to the establishment of a c. l. rating and is without weight in determining questions of reasonableness. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (210).

Fact that other cities and towns would seek similar relief, and application of the formula would involve serious reductions in rates, while proper elements for consideration in determining the reasonableness of rates, constitutes no bar to the granting of relief if rates are shown to be relatively unreasonable or unduly prejudicial. *South Bend Chamber of Commerce v. Director General*, 215 (220).

Proportional rates do not form a proper basis for measuring the reasonableness of local rates. *Monroe Chamber of Commerce v. Director General*, 227 (228).

Fixing of maximum rates at intermediate points in fourth section proceedings can not be considered as a finding that such rates are maximum reasonable rates when considered apart from the depressed rates to the competitive points. While rates prescribed in such proceedings should be given due weight they are not controlling. *Mobile Chamber of Commerce v. Director General*, as Agent, 605 (609); *Montgomery Chamber of Commerce v. Director General*, 610 (619).

MEASURE OF RATE—Continued.

A prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of its reasonableness, and certainly the existence of a lower rate in the past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove of value in ascertaining the reasonableness of rates in force during the period of federal control. *Anaconda Copper Mining Co. v. Director General*, 723 (729).

MILEAGE RATES. See **DISTANCE RATES.**

MINE RATINGS.

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, setting forth duty of carriers relative to distribution of cars and maintenance of just and reasonable mine ratings, quoted. Assignment of Freight Cars, 760 (765). The act does not attempt to define in detail what is a just and reasonable rate, fare, or charge, or what is a just and reasonable distribution of cars or rating of mines, these being left for determination by the Commission. Id. (765).

Paragraph (12) of section 1 of the act does not change the rule of law as laid down in the *Hocking Valley Case*, 12 I. C. C., 398, and the *Traer Case*, 13 I. C. C., 451, governing distribution of cars in accordance with the relative ratings of the mines, but states in statutory form that which had theretofore been the law pursuant to the decisions of the Commission and of the Supreme Court. Id. (766).

Railroad Administration's Car Service Section Circular CS-31 (Revised), governing the rating of coal mines (other than anthracite) and car distribution to such mines. Appendix 1. Id. (767).

Notice to carriers and shippers issued by the Commission on April 15, 1920, recommending continuance in effect of Railroad Administration's Car Service Section Circular CS-31 (Revised) modified in accordance with decisions of the Commission in *Hocking Valley Case*, 12 I. C. C., 398, and *Traer Case*, 13 I. C. C., 451. Appendix 2. Id. (771).

MINIMUM WEIGHT.

Lignite: Tariff rule initiated by Director General providing for minimum weights on intrastate shipments of lignite based upon marked capacity of car, found unreasonable and rule subsequently established, under which marked capacity of car except where loaded to full visible capacity, in which case actual weight will govern, found to be a reasonable rule. *San Antonio Freight Bureau v. Director General*, 45.

Potatoes:

Charges on basis of minimum weight of 36,000 pounds in lieu of actual weight, when loaded to full visible capacity but less than applicable minimum, not found unreasonable. *Northern Potato Traffic Asso. v. C., B. & Q. R. R. Co.*, 385.

Minima of 36,000 pounds, in car the capacity of which is less than 1,615 cubic feet, found unreasonable to extent it exceeded 30,000 pounds. Reasonable rule prescribed and reparation awarded. Id. (389).

MISROUTING.

Shipment tendered unrouted and moved by way of Canada, although lower rate applied over available intrastate route. Held: Shipment misrouted and reparation awarded. *Woodbury Lumber Co. v. Director General*, 324.

MISROUTING—Continued.

Contention that Commission is without jurisdiction to award reparation on misrouted shipment moving through Canada, where lower rate applied via an intrastate route, not sustained. *Id.* (325).

Shipments tendered unrouted. Lower rate in effect via route other than route of movement. *Held:* Shipment misrouted and reparation awarded. *Du Pont De Nemours & Co. v. Director General*, 361.

Route beyond compression point, over which tariff provided for refund of inbound freight charges if shipments forwarded outbound within 12 months, embargoed. Although no instructions for reshipment given, carrier forwarded via route over which this provision did not apply. *Held:* Shipments misrouted and reparation awarded. *Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co.*, 486.

Shipment reconsigned after arrival at originally billed destination without routing instructions. Carrier forwarded via point taking combination rate. Lower joint rate in effect via another point which was not restricted in its application to any particular route. *Held:* Shipment misrouted and reparation awarded. *Carolina Portland Cement Co. v. Director General*, 496.

Lower rate in effect, consistent with complainant's routing instructions, via route other than route of movement. *Held:* Shipments misrouted and reparation awarded. *Brown & Sons Lumber Co. v. Director General*, 509.

Bills of lading contained rate but no routing instructions. Shipments forwarded by carrier over route taking higher rate than that named in bills of lading. *Held:* Shipments misrouted and reparation awarded. *Highland Iron & Steel Co. v. E. & I. R. R. Co.*, 549.

MISTAKE. *See ERROR.*

MIXED CARLOADS.

Following recommendation in *Consolidated Classification Case*, 54 I. C. C., 1, charges on mixed carloads of sewer segment blocks and hollow building tile found unreasonable to extent they exceeded charges on basis of the highest carload rate and minimum attaching to any article in the load. Reparation awarded. *Dickey Clay Mfg. Co. v. Director General*, as Agent, 459.

Fact that rates are too low is no justification for denial of a mixing provision. *Id.* (460).

MODIFICATION. See REARGUMENT; REHEARING; SUPPLEMENTAL REPORT. NEWSPAPERS.

Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for proposed increased rates on newspapers transported in passenger cars. *Newspapers on Passenger Cars*, 743.

NOTICE.

Notwithstanding oral and written notice that repairs were to be made to trestles, complainant placed orders for coal in excess of normal requirements and cars reached the plants in excess of the facilities regularly available for unloading. *Held:* Demurrage accruing not unreasonable or unlawful and no negligence may be imputed to defendant who interfered as little as possible with facilities for receiving and unloading and completed repairs with least possible delay. *Cumberland Glass Mfg. Co. v. Director General*, 439.

NOTICE OF ARRIVAL.

Legally applicable demurrage charges found to have been lawfully assessed as mailing of notice of arrival by defendant to consignee at address indicated on bill of lading was in full compliance with tariffs. *Lowry Lumber Co. v. Director General*, 139.

Mailed by defendant, but was not received by complainant. *Held*: Following *Ohio Iron & Metal Co.*, 34 I. C. C., 75, demurrage charges properly assessed, as carrier's duty was performed when it placed notice in the mail. *Eastern Lumber Co. v. Director General*, 272.

Complainant notified by telephone and written notice mailed showing car initials and numbers, but not the contents or originating points. Finding in original report, 52 I. C. C., 304, that arrival notices were in substantial compliance with tariff requirements, and that demurrage charges legally accrued, affirmed on rehearing. *Steinhardt & Kelly v. E. R. R. Co.*, 369.

Bill of lading contained instructions as to party to be notified at reconsignment point together with notation "to be reconsigned to Lansing" but did not name party to whom notice should be sent at the latter point. Carrier reconsigned the shipment to ultimate destination where demurrage accrued. *Held*: Carrier at fault in accepting and moving the shipment under ambiguous instructions contained in the bill of lading and demurrage charges illegally assessed. Reparation awarded. *Gill-Andrews Lumber Co. v. Director General*, 493.

OCEAN RATES.

Generally not published and are subject to fluctuations. Therefore, an equalization based on such rates by no means constitutes a permanent basis upon which to construct rail rates to the ports. *Inland Steel Co. v. Director General*, 339 (340).

OFF LINE CHARGE.

A carrier is entitled to reasonable compensation for each service rendered; and for services that it may render or procure to be rendered off its own line or outside the mere matter of transportation over its line, it may charge and receive compensation. *Anaconda Copper Mining Co. v. Director General*, 723 (738).

OPERATING CONDITIONS.

One factor of through rate canceled prior to movement and higher combination rate than charged legally applicable. *Held*: Shipment undercharged and rate legally applicable not shown unreasonable, due to sparsity of traffic and unfavorable and expensive operating conditions in the territory involved. *Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co.*, 39.

Due to sparsity of traffic and difficult operating conditions via route of movement and in the territory involved, rates on a sporadic shipment of coal not shown to have been unreasonable. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 300 (302).

OPPOSITE DIRECTION. See BOTH DIRECTIONS.**OVERCHARGES.**

No joint rate published and combination rate assessed. Lower combination in effect applicable under Rule 5 (b) of Tariff Circular 18-A. *Held*: Rate charged not found unreasonable, but shipments overcharged. Refund directed. *American Agricultural Chemical Co. v. H. & B. V. Ry. Co.*, 177.

OVERCHARGES—Continued.

Charges collected on crude sulphur from Bryanmound, Tex., to Thompson's Point, N. J., exceeded the legally applicable rate found reasonable in *Du Pont De Nemours & Co.*, 56 I. C. C., 334. Held: Shipments overcharged and refund directed. *Du Pont De Nemours & Co. v. Director General*, 507.

Domestic fifth-class rate on imported soya-bean oil from Seattle, Wash., to Babbitt, N. J., found illegal to extent it exceeded import commodity rate legally applicable. Shipments overcharged and reparation awarded. *Frost & Co. v. Director General*, as Agent, 755.

PACKING. See also CONTAINERS.

Concessions in freight charges based upon the manner in which goods are packed or the containers which are used are not unlawful, provided they are reasonably related to the advantages accruing to the carriers from the improved packing or loading. *Pneumatic Scales Corp. v. A. & R. R. Co.*, 308 (309).

Ratings in official, western, and southern classifications on centrifugal cream separators, in boxes, not shown unreasonable in comparison with ratings on the same commodity in crates. *De Laval Separator Co. v. A. & R. R. Co.*, 668 (673, 676).

PANAMA CANAL ACT.

The ownership by the U. S. Steel Corporation of the stock of both the U. S. Steel Products Co. and the several applicant rail carriers, held to constitute an interest within the meaning of section 5 of the act by rail lines in water lines owned and operated by the Products Company. Application of *United States Steel Products Co.*, 513 (515).

Section 5 of the act charges the Commission only with the duty of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this weight must be given to actual conditions at the present time. *Id.* (516).

Under present conditions and those that seem probable in the future, whatever competition there may be between the applicant rail carriers and the Isthmian S. S. Lines and the New York and South America Line of the U. S. Steel Products Co., operating between eastern United States ports and the western coasts of North and South America, through the Panama Canal, found unsubstantial and merely nominal. *Id.* (517).

PARTIES.

Where freight charges are paid by consignees, but are charged back to the consignors, the consignees are not entitled to reparation. *Muskogee Wholesale Grocer Co. v. M., K. & T. Ry. Co.*, 125 (127-128).

On rehearing reparation awarded to complainant factors, as representatives of shippers, on account of charges found in original report, 50 I. C. C., 345, to have been illegally collected on shipments of cotton concentrated at Memphis, Tenn., and subsequently reshipped. *Memphis Freight Bureau v. St. L. & S. F. R. Co.*, 212.

Until complainant factors receive payment for their services and expenses they have a property right or interest against their principals in the proceeds resulting from the handling of freight, and the Commission can not justly or legally deprive them of that right by awarding reparation directly to the principals. *Id.* (213).

PARTIES—Continued.

Purchase price based on freight rate under agreement with consignors that one-half of any excess over and above such rate would be borne by consignors. Charges were paid and borne by complainant and one-half of excess charged back to consignors. Reparation awarded complainant who introduced in evidence assignments from consignors of their claims for reparation. *Bare Paper Co. v. Director General*, as Agent, 329 (331).

Complainants having failed to name carriers over whose lines rates applied, as parties defendant, in addition to the Director General, although opportunity afforded, no order for the future entered. *Inland Steel Co. v. Director General*, 339 (342).

Findings in supplemental report, 37 I. C. C., 345, denying reparation on shipments on which complainant failed to establish that they bore the transportation charges, reaffirmed. *Oden & Elliott v. S. A. L. Ry.*, 698.

Party claiming reparation is not entitled to recover unless it is definitely shown that he finally bore the unlawful freight charges as such. *Id.* (699).

Original complaint brought to recover reparation for account of complainant only, and not as agent for vendors. Amending of complaint by permitting intervention of the latter who paid and bore the freight charges can have no effect as they were not joined as parties within the statutory period. Intervener's claim for reparation found barred. *Id.* (699).

PASSENGER FARES.

Charges for intrastate passenger-train service, upon basis of special train rates, found illegally assessed as the train was not reserved for the exclusive use of complainant's employees and under the governing tariff was not a special train but an extra train for which regular passenger-train service rates should have been collected. Reparation awarded. *La Salle County Carbon Coal Co. v. Director General*, 367.

PAST RATES.

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate, is important evidence that the service was considered in arriving at the rate, and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (682-683).

A prima facie presumption of reasonableness attaches to a rate that has been long voluntarily maintained. But the continuance of a given rate is not conclusive evidence of its reasonableness, and certainly the existence of a lower rate in the past, especially in view of the abrupt economic changes since the date when the lower rates were established, does not necessarily prove of value in ascertaining the reasonableness of rates in force during the period of federal control. *Anaconda Copper Mining Co. v. Director General*, 723 (729).

PAYMENT.

Rules and regulations for the prompt payment of transportation rates and charges as provided in section 3 of the act to regulate commerce as amended by section 405 of the transportation act, 1920, prescribed. Regulations for Payment of Rates and Charges, 591.

PERCENTAGE RATES.

Class and commodity rates between Huntington, W. Va., and points in trunk lines and New England territories, based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Jobbers' & Mfrs. Bureau of Huntington v. A. C. R. R. Co.*, 64 (76).

Commodity rates on glass bottles from Huntington, W. Va., to eastern cities found unduly prejudicial to extent they exceed the rates in effect from Charleston, W. Va., by more than 3 per cent of the Chicago-New York rate. *Id.* (76).

Class and commodity rates between Portsmouth, Ohio, and Ashland, Ky., and points in trunk line and New England territories based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Board of Trade of Portsmouth v. A. C. R. R. Co.*, 78.

Basis applied in making rates between South Bend, Mishawaka, Elkhart, Goshen, Napanee, and Michigan City, Ind., and points in eastern trunk line and New England territories found relatively unreasonable and unduly prejudicial of points in western and northern Ohio and southwestern Michigan. *South Bend Chamber of Commerce v. Director General*, 215.

Rates on imported nitrate of soda from north Atlantic ports to Hegewisch, Ill., and Willow and Ivorydale, Ohio, found unreasonable to extent they exceed, from New York to Hegewisch 33 cents per 100 pounds; from New York to Willow, from Philadelphia and Baltimore to Hegewisch and Willow, and from Baltimore to Ivorydale, specified percentages of the New York-Hegewisch rates, less the regular port differentials. Reparation awarded. *General Chemical Co. v. Director General*, 222.

Rates on iron and steel articles from Minnequa, Colo., to Pacific coast points, based upon a flat differential under the Chicago rates, found unduly prejudicial to extent they exceed 77 per cent of the rates from Chicago, Ill., to same destinations. *Colorado Fuel & Iron Co. v. Director General*, 253.

Rates on iron and steel articles from Galveston and Houston, Tex., to Louisiana points west of the Mississippi, excluding Shreveport and points taking same rates under decision in 48 I. C. C., 312, found unreasonable and unduly prejudicial to extent they exceed 60 per cent of the fifth-class rates prescribed in the above case for similar distances, increased by not more than 25 per cent. *Galveston Commercial Asso. v. Director General*, 390.

PERISHABLE FREIGHT.

Complaint alleging discrimination in the assessment of stated refrigeration charges on berries, domestic fruits, melons, and vegetables between points in western trunk line territory, while in other territories charges were upon cost-of-ice basis, dismissed as issue considered in *Perishable Freight Investigation*, 56 I. C. C., 449. *Wisconsin & Michigan Fruit & Vegetable Jobbers Asso. v. A. & W. Ry. Co.*, 249.

Refrigeration charges on fruits and vegetables from Kansas and Missouri to Iowa and Nebraska, and between points in Iowa and points in Nebraska not found unreasonable in the past. In view of the changed situation brought about by *Perishable Freight Investigation*, 56 I. C. C., 449, record affords no basis for a finding with respect to present charges. *Nebraska-Iowa Fruit Jobbers Asso. v. Director General*, 423.

PIPE LINES.

The Commission may not require rail carriers to reduce rates not shown unreasonable in and of themselves in order that the users of such rates may better compete with others who are in a position to utilize the less costly service of pipe lines. *Winona Oil Co. v. Director General*, 152 (154).

PITTSBURGH, ALLEGHENY & MCKEES ROCKS RAILROAD COMPANY.

Found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *P., A. & McK. R. R. Co. v. Director General*, 1 (9).

History and description of. *Id.* (2-3).

PLACEMENT. *See* SPOTTING CARS.

PLANT FACILITY.

Switching and spotting service performed by defendants for industries in the Birmingham district without charge not shown unduly prejudicial to complainant who performs its own service within its plant at Bessemer, Ala., with its own power, and for which no allowances are made. Services accorded the alleged preferred industries are dissimilar to those performed by complainant, which services defendants should not be required to render or for which allowances should be made. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 442.

PLEADING AND PRACTICE.

Complainants having failed to name carriers over whose lines rates applied as parties defendant in addition to the Director General, although opportunity afforded, no order for the future entered. *Inland Steel Co. v. Director General*, 339 (342).

Counsel for defendant entered an objection at the hearing to the Commission's power to correct an error in its report or order except upon formal application for rehearing. As defendant did not avail itself of opportunity afforded for filing brief in opposition to a correction of the Commission's former report the objection was held not well taken. *Dodson & Co. (Inc.) v. C. R. R. Co. of N. J.*, 381 (383).

POWER OF COMMISSION. *See* JURISDICTION.

PRECOOLING.

In the exercise of "that flexible limit of judgment which belongs to the power to fix rates," finding in former reports 39 I. C. C., 88 and 45 I. C. C., 248, denying reparation on precooled and pre-iced oranges from California points to destinations in other states and in Canada, reaffirmed on reargument. *Arlington Heights Fruit Exchange v. S. P. Co.*, 580.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION.

Articles: Separators, centrifugal cream: Rules applicable to straight carloads of agricultural implements, other than hand, or when mixed with centrifugal cream separators, permitting stoppage in transit partly to unload and storage in transit, not shown to result in unjust discrimination in favor of agricultural implements. *De Laval Separator Co. v. A. & R. R. Co.*, 668 (676).

Car Spotting: Switching and spotting service performed by defendants for industries in the Birmingham district without charge not shown unduly prejudicial to complainant who performs its own service within its plant at Bessemer, Ala., with its own power, and for which no allowances are made. Services accorded the alleged preferred industries are dissimilar to those performed by complainant, which services defendants should not be required to render or for which allowances should be paid. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 442.

PREFERENCES AND PREJUDICES—Continued.

Localities:

Arkansas points: Rates on citrus fruits, bananas, pineapples, and coconuts from New Orleans, La., and Mobile, Ala., to points in southern Arkansas, found unduly prejudicial to such Arkansas points to extent they exceed rates to points in northern Louisiana from same points of origin for similar distances. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (237).

Beaumont, Orange, Galveston, and Houston, Tex.: All-rail rates on clean rice from, to eastern seaboard territory, not found unreasonable, but found unduly prejudicial to extent they exceed by more than 20 cents per 100 pounds the all-rail rates in effect from New Orleans, La., to same destinations. *Beaumont Chamber of Commerce v. A. & V. Ry. Co.*, 189.

Chicago, Ill., and Terre Haute and Vincennes, Ind.: Former finding, 55 I. C. C., 462, that rates on iron and steel articles from, to Pacific coast ports, for export, were not unduly prejudicial in favor of Pittsburgh, Pa., reversed on reargument. *Inland Steel Co. v. Director General*, 339.

Clemons, Pa.: Following *Anthracite Case*, 35 I. C. C., 220, application of rates on anthracite coal from Wayne washery, Clemons, Pa., to Undercliff (Edgewater), N. J., for reshipment by water, upon basis of rates from Wyoming region, found unreasonable as to pea sizes, but on sizes smaller than pea, not found unreasonable or unduly prejudicial. Reparation awarded. *Meeker v. E. R. R. Co.*, 434.

Colliery, Ill.: State and interstate rates on coal from, a point in the Springfield group, to interstate destinations, found unduly prejudicial to extent they exceed the rates from other points in the same group to same destinations. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (280).

East Ithaca, N. Y.: Rates on anthracite coal from Coxton, Pa., to, found unduly prejudicial to extent they exceeded rates in effect to Ithaca, N. Y. Reparation awarded. *Cornell v. L. V. R. R. Co.*, 157.

Eau Claire, Chippewa Falls, and Menomonie, Wis.: Rates on petroleum and its products from the midcontinent oil fields in Kansas and Oklahoma to, not shown unreasonable or unduly prejudicial as compared with rates in effect to Durand, Wis., and Wabasha, Minn., and points in their vicinity. *Winona Oil Co. v. Director General*, 152.

Fort Dodge, Kalo, Gypsum, and Marshalltown, Iowa: Class rates based on Mississippi River combinations, applicable between, and points east of the Indiana-Illinois state line, not found unreasonable or unduly prejudicial of competing points. *Fort Dodge Commercial Club v. Director General*, 343.

Galveston and Houston, Tex.:

Rates on iron and steel articles, in straight or mixed carloads, from, to destinations in Oklahoma, found unreasonable and unduly prejudicial as compared with rates applicable to merchant mixture, so called, from St. Louis, Mo., to Oklahoma points for similar distances. *Galveston Commercial Asso. v. Director General*, 390.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Galveston and Houston, Tex.—Continued.

Rates on iron and steel articles from, to Louisiana points west of the Mississippi River, excluding Shreveport and points taking same rates under decision in 48 I. C. C., 312, found unreasonable and unduly prejudicial as compared with rates from St. Louis, Mo., to extent they exceed 60 per cent of the fifth-class rates prescribed in the above case for similar distances, increased by not more than 25 per cent. *Id.* (397).

Grand Rapids, Mich.: Present adjustment of rates on plaster and gypsum products from, and points grouped therewith, to that portion of Wisconsin north of an east-and-west line drawn from Sheboygan to Prairie du Chien and to points in the upper peninsula of Michigan and the extreme eastern part of Minnesota, found unduly prejudicial as compared with rates to the same destinations from Fort Dodge, Iowa, and points grouped therewith. *Grand Rapids Plaster Co. v. Director General*, 264.

Helena, Ark.: Rates from St. Louis, Mo., and points basing thereon, to, found unduly prejudicial to Helena of Memphis, Tenn. Non-prejudicial basis of rates prescribed for the future. *Helena Traffic Bureau v. St. L., I. M. & S. Ry. Co.*, 11.

Huntington, W. Va.:

Class and commodity rates between Huntington and points in trunk line and New England territories, based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Jobbers & Mfrs. Bureau of Huntington v. A. C. R. R. Co.*, 64 (70).

Commodity rates on glass bottles from, to eastern cities found unduly prejudicial to extent they exceed the rates in effect from Charleston, W. Va., by more than 3 per cent of the Chicago-New York rate. *Id.* (76).

Indiana points: Percentage basis applied in making rates between South Bend, Mishawaka, Elkhart, Goshen, Napanee, and Michigan City, Ind., and points in eastern trunk line and New England territories found relatively unreasonable and unduly prejudicial of points in western and northern Ohio and southwestern Michigan. *South Bend Chamber of Commerce v. Director General*, 215.

Jackson, Miss.: Class rates from Chicago and Cairo, Ill., St. Louis, Mo., and Louisville, Ky., and rates on grain and grain products from Cairo and St. Louis, to, found unduly prejudicial to Jackson and unduly preferential of New Orleans, La., and Vicksburg and Natchez, Miss. *Meridian Traffic Bureau v. Director General*, 107 (111).

Kansas City district: Rates on refined and fuel oil from, to Chicago, Ill., found unreasonable and unduly prejudicial to extent that rate on fuel oil exceeds a rate at least 5 cents lower than on refined oil, and to extent that rates on fuel oil, local or proportional, exceed rates at least 3 cents lower than from the midcontinent oil field to same destination. *Kansas City Refining Co. v. Director General*, 187.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Los Angeles, Calif.: Rates on grinding balls from, to interstate destinations, found unduly preferential of Chicago, Ill., and other competing eastern points. *Los Angeles Foundry Co. v. Director General*, 184.

Meridian, Miss.: Class and commodity rates from Ohio and Mississippi river crossings, Chicago, Ill., and related points to, found unduly prejudicial to Meridian and unduly preferential of New Orleans, La., Mobile, Ala., and Vicksburg, Miss. *Meridian Traffic Bureau v. Director General*, 107 (111).

Minnequa, Colo.: Rates on iron and steel articles from, to Pacific coast points, based upon a flat differential under the Chicago rate, found unduly prejudicial to extent they exceed 77 per cent of the rates from Chicago, Ill., to same destinations. *Colorado Fuel & Iron Co. v. Director General*, 253.

Mobile, Ala.: Upon further hearing original report 32 I. C. C., 272, modified and adjustment of rates on cotton from various points in Alabama and Georgia to Mobile, Ala., and Savannah, Ga., for export, found unduly prejudicial to Mobile and unduly preferential of Savannah in some instances and not in others. Reasonable relationship prescribed. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 554.

Monroe, La.: Local rates on coarse grains from Cairo, Ill., to, not found unreasonable, but maintenance of lower proportional rates from Cairo to Rayville, La., found to subject Monroe to undue prejudice in favor of Rayville to extent that rate from Cairo, on traffic originating beyond, to Monroe, exceeds the rate to Rayville by more than 1.5 cents. *Monroe Chamber of Commerce v. Director General*, 227.

North Carolina points: Rate adjustments between points in zones 1, 2, 3, and 4 in North Carolina and Norfolk and Richmond, Va., and points in South Carolina and the southeast; and between points in zone 1 and 2 in North Carolina and Norfolk and Richmond, and eastern ports and interior eastern points, found unduly prejudicial to the North Carolina points of Norfolk and Richmond. Reasonable relationship prescribed. *Corp. Commission of N. C. v. Director General*, 523.

Pascagoula and Moss Point, Miss.:

Class and commodity rates, except rates on lumber, between Pascagoula and Moss Point, and Ohio and Mississippi river crossings north of Memphis, Tenn., Chicago, Ill., and related points, found unduly prejudicial to extent they exceed the rates between the last named points and New Orleans, Mobile, and Gulfport. *Chamber of Commerce, Moss Point, Miss., v. I. & N. R. R. Co.*, 112.

Class and commodity rates, except rates on lumber, between Pascagoula and Moss Point, and Atlanta, Ga., and Chattanooga and Knoxville, Tenn., found unduly prejudicial to extent they exceed the rates between the last named points and New Orleans, La., and Gulfport, Miss. *Id.* (117-118).

Portsmouth, Ohio, and Ashland, Ky.: Class and commodity rates between Portsmouth and Ashland, and points in trunk line and New England territories, based on 87 per cent of the Chicago-New York and New York-Chicago rates, found unreasonable and unduly prejudicial to extent they exceed 82 per cent of such base rates. *Board of Trade of Portsmouth v. A. C. R. R. Co.*, 78.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Roaring Springs, Pa.: Rates on pulp wood from points in Virginia to, found unreasonable and unduly prejudicial to extent they exceeded rates in effect from same points of origin to Williamsburg, Pa. Reparation awarded. *Bare Paper Co. v. Director General*, as Agent, 329.

Sioux City, Iowa: Rates on concrete drain tile from, to points in South Dakota, east of Missouri River, not found unreasonable, but found unduly prejudicial in favor of competitors located at other drain-tile manufacturing points in Iowa and Minnesota. Reasonable basis of rates prescribed and reparation denied. *Sioux City Concrete Pipe Co. v. C. & St. P. Ry. Co.*, 308.

Terre Haute, Ind.: Fourth and fifth class rates on salted meats, in bulk, and packing-house products, from, to Chicago, Ill., found not unreasonable, but adjustment of rates from Terre Haute and St. Louis, Mo., to Chicago, found unduly prejudicial to complainant at Terre Haute in so far as the rates exceeded those from St. Louis. Reparation denied. *Home Packing & Ice Co. v. Director General*, 691.

Washington and Idaho points: Maintenance of rates on smelter products, including pig lead and lead bullion, from, to points on and east of the Missouri and Mississippi rivers, higher than from points in Montana, Utah, and Arizona to the same destinations, found unduly prejudicial to such points in Washington and Idaho. Reparation denied. *Anaconda Copper Mining Co. v. Director General*, 723 (736).

Persons:

Fact that competitors may have enjoyed larger profits does not establish damage as a consequence of undue prejudice. *Home Packing & Ice Co. v. Director General*, 691 (697).

On traffic originating at points west of Groton, Conn., for delivery to complainant's plant at that point, rule required that shipments be billed to Midway, Conn., for delivery via ferry extension, necessitating a back haul from Midway to Groton. *Held*: Charges assessed, in so far as they exceed by more than \$3 per car the charges on like traffic delivered in Groton proper, found unduly prejudicial. *Groton Iron Works v. N. Y., N. H. & H. R. R. Co.*, 704.

Practice of defendants in refusing to spot cars at complainant's plant in the Buffalo rate district or to make allowances to complainant for performing the service, while performing spotting service or making allowances to complainant's competitors in the same rate district, found to result in undue prejudice. Reparation denied. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745.

PRICE. *See also* VALUE.

Prices were fixed by the Food Administration, and at no time and in no instance was the price made or controlled, to complainant's detriment, by any competitor by virtue of the preferential rate herein found to exist. Reparation denied for want of proof. *Home Packing & Ice Co. v. Director General*, 691 (697).

Only damage alleged by complainant was loss of profit, but as prices of all commodities sold by complainant and its competitors were fixed by the government and competitors were not able to and did not control the buying or selling markets, it has not been shown that complainant's profits would have been any greater had the existing discrimination and prejudice been removed. Reparation denied. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745 (752).

PRIORITY IN TRANSPORTATION.

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission to direct priorities in transportation. Assignment of Freight Cars, 760 (766). If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to railway fuel, as was done when priorities were issued by the President's priority agent during the war. *Id.* (766).

PROFITS.

Fact that competitors may have enjoyed larger profits does not establish damage as a consequence of undue prejudice. *Home Packing & Ice Co. v. Director General*, 691 (697).

While the shipper is entitled to a reasonable rate, the carrier is at the same time entitled to a reasonable return; and carriers are entitled to reasonable rates for the service they render even though those rates may be such that shippers can not do business at a profit. *Anaconda Copper Mining Co. v. Director General*, 723 (732).

Only damage alleged by complainant was loss of profit, but as prices of all commodities sold by complainant and its competitors were fixed by the government and competitors were not able to and did not control the buying or selling markets, it has not been shown that complainant's profits would have been any greater had the existing discrimination and prejudice been removed. Reparation denied. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745 (752).

PROOF. See also BURDEN OF PROOF.

A violation of the fourth section of the act does not, without proof of damage, entitle the complainant to an award of reparation. *Illinois Brick Co. v. Director General*, 320 (323); *Union Tanning Co. v. Director General*, 354 (358); *Home Packing & Ice Co. v. Director General*, 691 (697).

In the absence of proof of tangible injury to complainant or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. *Phelps Dodge Corp. v. Director General*, 714 (720).

PROPORTIONAL RATES.

Application of Rule 5 (b) of Tariff Circular 18-A, is not limited to proportional rates. *American Agricultural Chemical Co. v. H. & B. V. Ry. Co.*, 177 (178).

Local rates on coarse grains from Cairo, Ill., to Monroe, La., not found unreasonable, but maintenance of lower proportional rates from Cairo to Rayville, La., found to subject Monroe to undue prejudice in favor of Rayville, to extent that rate from Cairo, on traffic originating beyond, to Monroe exceeds the rate to Rayville by more than 1.5 cents. *Monroe Chamber of Commerce v. Director General*, 227.

Do not form a proper basis for measuring the reasonableness of local rates. *Id.* (228).

PROPRIETARY LINES.

Fact that lines bringing coal from Illinois and Indiana mines to East St. Louis, Ill., as a part of the transportation to St. Louis, Mo., are proprietary lines of the Terminal R. R. Asso. of St. Louis, does not require, as a matter of correct legal interpretation, the application of a common rate to the two districts; nor is it material to the issue whether those cities are to be viewed as comprising a single industrial and economic unit. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (652).

PROSPERITY.

While rates ought not to be established upon the basis of a period of adverse conditions, so neither should they be fixed altogether with respect to recent years of comparative prosperity. *Phelps Dodge Corp. v. Director General*, 714 (718).

RAIL AND WATER.

Rates on copper bullion from Arizona points to New York, N. Y., via all-rail and rail-and-water routes not found unreasonable; neither should rail-and-water rates be lower than the all-rail rates, as there is no evidence to sustain contention that cost of transportation obtaining during federal control is or was less via rail-and-water than via all-rail routes. *Phelps Dodge Corp. v. Director General*, 714 (719, 720).

Fact that there is a water route affording a low rate from a given point to a certain destination does not justify the Commission in permitting the rail carrier to charge an unreasonable rate to that given point. *Anaconda Copper Mining Co. v. Director General*, 723 (733).

Objection to establishment of local rates to Galveston, Tex., on ground that smelter products might be moved on the basis of those rates to that point and sent forward in privately owned or chartered bottoms, thereby enabling shippers to avoid payment of the through rates via all-rail and rail-and-water routes, can not be seriously considered, for shippers are entitled to reasonable rates and it is the Commission's duty to require an adjustment consonant with the provisions of the law. *Id.* (733).

RAILROAD CONSIGNEE. *See COMPANY MATERIAL.*

RAILWAY FUEL. *See FUEL.*

RATE COMPARISONS.

Table comparing distances and first-class rates from Richmond, Va., and Raleigh, N. C., to various points in the southeast. *Corp. Commission of N. C. v. Director General*, 523 (525).

Statement of present class rates between North Carolina and South Carolina points as compared with present rates between various points, including rates established or not found unreasonable by the Commission, for comparable distances. *Id.* (529-530).

Comparison of distances and first-class rates from representative northern points to Richmond, Va., and Raleigh, N. C. *Id.* (538).

REARGUMENT. *See also REHEARING; SUPPLEMENTAL REPORT.*

Former finding, 55 I. C. C., 462, that rates on iron and steel articles from Chicago, Ill., Terre Haute and Vincennes, Ind., to Pacific coast ports, for export, were not unduly prejudicial in favor of Pittsburgh, Pa., reversed. *Inland Steel Co. v. Director General*, 339.

REASONABLE RATES.

The act does not attempt to define in detail what is a just and reasonable rate, fare, or charge, or what is a just and reasonable distribution of cars or rating of mines, these being left for determination by the Commission. *Assignment of Freight Cars*, 760 (765).

REASONABLENESS OF RATE. *See MEASURE OF RATE.*

RECONSIGNMENT. *See also DIVERSION.*

Following *Wood Case*, 53 I. C. C., 183, demurrage charges on cars held at reconsignment point because of embargoes at points to which diversion was ordered, found illegal, as tariffs contained no provision against reconsignment to embargoed points. Reparation awarded. *Atlantic Lumber Co. v. N. Y., P. & N. R. R. Co.*, 129; *Trantum & Danzer (Inc.) v. N. Y., P. & N. R. R. Co.*, 281.

RECONSIGNMENT—Continued.

Embargo in effect at billed destination. Car reconsigned, but complainant failed to request change in name of consignee. Upon arrival at new destination consignee could not be located and complainant did not give delivery instructions until after receipt of a second telegram. Delivery again not affected due to accrued demurrage, and car was towed across the river and subsequently towed back and delivered. *Held*: Demurrage and towage charges not unreasonable or otherwise unlawful. *Currie & Campbell v. Director General*, 450.

Change of destination in transit of certain cars of bituminous coal on orders of United States Fuel Administration found to have constituted a diversion, as it is a common incident of diversion or reconsignment that instructions for the change in destination, routing, or consignee, be given by some one other than original shipper, especially where the property is moving under order bills of lading. *Du Pont De Nemours & Co. v. Director General*, 461 (463).

Where contents of car remain unchanged, change of destination or route does not necessitate an out-of-line haul, and request is made in reasonable time, reconsignment and diversion on basis of through rate from point of origin to new destination, with a fair charge for extra services performed, are reasonable practices. Denial thereof is unreasonable and unlawful and the Commission has power to require their establishment. *Id.* (463).

Shipment reconsigned after arrival at originally billed destination without routing instructions. Carrier forwarded via point taking combination rate. Lower joint rate in effect via another point which was not restricted in its application to any particular route. *Held*: Shipment misrouted and reparation awarded. *Carolina Portland Cement Co. v. Director General*, 496.

Charges in excess of those which would have accrued at through rates plus legally applicable reconsigning charges found to have resulted from the unlawful refusal of carriers to permit reconsignment in accordance with their tariffs, on shipments transferred into other cars at reconsignment point on account of operating rules which prohibited cars from moving off the lines of the carriers. Reparation awarded. *Schuette & Co. v. Director General*, 709.

REDUCTION IN RATES.**In General:**

The Commission may not require rail carriers to reduce rates not shown unreasonable in and of themselves in order that the users of such rates may better compete with others who are in a position to utilize the less costly service of pipe lines. *Winona Oil Co. v. Director General*, 152 (154).

Carriers are entitled to reasonable compensation for their services, but fear that the consumer may not participate in prospective reductions in rates is no valid objection to the establishment of a carload rating and is without weight in determining questions of reasonableness. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (210).

By Carriers:

Rate on crude petroleum, in tank cars, from Burkburnett, Tex., to Oklahoma City, Okla., exceeded subsequently established rate. Reparation awarded. *Atwood Refining Co. v. Director General*, 22.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Rate and switching charge on crossties from St. Elmo and other Illinois points to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, exceeded lower rate and switching charge subsequently established. Reparation awarded. *Three States Tie Co. v. C. & E. I. R. R. Co.*, 24.

Class N rate on staves from Brilliant, Ala., to Paducah, Ky., exceeded lower commodity rate subsequently established. Reparation awarded. *Paducah Board of Trade v. I. C. R. R. Co.*, 37 (38).

Fifth-class rate on soya-bean oil from Los Angeles, Calif., to Ivorydale, Ohio, exceeded lower commodity rate subsequently established. Reparation awarded. *Procter & Gamble Co. v. Director General*, 42.

Fifth-class rates on liquefied petroleum gas exceeded lower commodity rate on gasoline, which rate was subsequently made applicable to liquefied petroleum gas. Reparation awarded. *Akin Gasoline Co. v. Director General*, 133 (134).

Fifth-class rate on rails and angle bars from Steele, Mo., to Madison and East St. Louis, Ill., exceeded lower commodity rate subsequently established. Reparation awarded. *Cohen-Schwartz Rail & Steel Co. v. St. L.-S. F. Ry Co.*, 141.

Combination rate, both factors of which were increased by the Director General under General Order No. 28; found unreasonable to extent it exceeded lower joint commodity rate subsequently established. Reparation awarded. *New Jersey Power & Light Co. v. Director General*, 147.

First-class rate on baking and drying ovens from Detroit, Mich., to Oakland, Calif., exceeded lower class A rate subsequently established. Reparation awarded. *Chevrolet Motor Co. v. Director General*, 149.

On anthracite coal from Coxton, Pa., to Detroit, Mich., via Buffalo, N. Y., factor beyond Buffalo was subsequently reduced. *Held*: Combination rate assessed found unreasonable to extent it exceeded lower joint rate subsequently established. Reparation awarded. *Koenig Coal Co. v. G. T. Ry. Co.*, 241.

Rates on glass sand from Ottawa, Ill., and related points, to Huntington, W. Va., found unreasonable to extent they exceeded rate subsequently established to enable Huntington to meet competition at other points north of the Ohio River. Reparation awarded. *Boldt Co. v. Director General*, 259 (260).

Rates on cement from Crestmore, Calif., to Arizona points not found unreasonable as compared with rates in effect from Colton, Calif., and subsequently made applicable from Crestmore. *Riverside Portland Cement Co. v. R. & P. R. R. Co.*, 291.

Rate on pickles, in brine, from New York Mills, Minn., to Omaha, Nebr., exceeded rate in effect from more distant points in Minnesota and subsequently established from New York Mills. Reparation awarded. *Haarmann Vinegar & Pickle Co. v. Director General*, 294 (295).

Rates on lemons from California points to Lewiston, Miles City, and Glendive, Mont., exceeded lower rate subsequently established. Reparation awarded. *Gamble-Robinson-Lewistown Co. v. Director General*, 327.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Rate on blackstrap molasses, in tank-car loads from Mobile, Ala., to Rondout, Ill., exceeded lower rate subsequently established. Reparation awarded. Cuban Molasses Co. *v.* Director General, 359.

Due to dissatisfaction from establishment of same import rate on copra and coconut oil from Pacific coast ports to eastern destinations, Director General reduced the rate on copra to 85 cents and on coconut oil to 90 cents. Reparation awarded on shipments of copra on basis of rates subsequently established. Procter & Gamble Co. *v.* Director General, as Agent, 465.

Class C rate on old rails from Lafayette, La., to East St. Louis and Madison, Ill., exceeded lower commodity rate in effect from Texas common points to St. Louis, Mo., and subsequently made applicable from Lafayette to East St. Louis and Madison. Reparation awarded. Cohen-Schwartz Rail & Steel Co. *v.* M. L. & T. R. R. & S. S. Co., 479.

Class rates on cypress lumber from New Orleans, La., to Violet, Phoenix, and Pointe-a-la-Hache, La., exceeded lower commodity distance scale subsequently established. Reparation awarded. St. Bernard Cypress Co. *v.* Director General, as Agent, 489.

Rate on pig iron from Birmingham, Ala., to McGill, Nev., not found unreasonable as compared with lower rate via another route, which rate was subsequently established via route of movement. Tuffli Bros. Pig Iron & Coke Co. *v.* L. & N. R. R. Co., 491.

Combination rate on coke from Seaboard, N. J., to Hellertown, Pa., exceeded lower joint rate subsequently established. Reparation awarded. Thomas Iron Co. *v.* Director General, 505.

Joint rate on peanuts from Suffolk, Va., to El Paso, Tex., subsequently reduced to basis of the aggregate of intermediate rates. Reparation awarded. Taylor & Smith *v.* Director General, 520.

Joint commodity rate on oats from South Dakota to Portland and Helix, Oreg., and Tacoma, Wash., exceeded lower "special" commodity rate subsequently established. Reparation awarded. Northern Grain & Warehouse Co. *v.* Director General, 629.

Sixth class rate on coal ashes and cinders from Jersey City, N. J., to Rahway and Woodbridge, N. J., exceeded lower commodity rates subsequently established. Reparation awarded. Philadelphia Quartz Co. *v.* Director General, as Agent, 632.

The reduction of a rate is not of itself conclusive evidence of unreasonableness of the rate reduced. Thomas Iron Co. *v.* Director General, as Agent, 657 (659).

Combination rate on slack barrel gum staves from Greenwood, Miss., to Hastings, Fla., not found unreasonable or otherwise unlawful, due to reduction in the factor from Greenwood to Jacksonville, Fla. Whitehouse Barrel Co. *v.* Director General, 753.

By Commission:

Rates on locomotive and tender, dead, on their own wheels, from Bellemont, Ariz., to Los Angeles, Calif., there repaired and reshipped to Williams, Ariz., found unreasonable. Reasonable rates prescribed and reparation awarded. Saginaw & Manistee Lumber Co. *v.* A., T. & S. F. Ry. Co., 167.

REDUCTION IN RATES—Continued.

By Commission—Continued.

Combination rate on hay from Grape, Calif., to Clarkdale, Ariz., found unreasonable to extent it exceeded aggregate of intermediate rates from Los Angeles, Calif., to Clarkdale. Reasonable rate prescribed and reparation awarded. United Verde Extension Mining Co. v. Director General, 181.

Ratings and rates on rubber tire tubes, pneumatic rubber tires, and solid rubber tires, unmounted, and on solid rubber tires mounted on iron or steel base, in straight or mixed carloads, from points in official and western classification territories to points in southern classification territory, when traffic is governed by the southern classification, not found unreasonable in the past but for the future will be unreasonable to extent they exceed rating of third class. Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 206.

Rates on imported nitrate of soda from north Atlantic ports to Hegewisch, Ill., and Willow and Ivorydale, Ohio, found unreasonable to extent they exceed, from New York to Hegewisch 33 cents per 100 pounds; from New York to Willow, from Philadelphia and Baltimore to Hegewisch and Willow, and from Baltimore to Ivorydale, specified percentages of the New York-Hegewisch rates, less the regular port differentials. Reparation awarded. General Chemical Co. v. Director General, 222.

Charges for switching interstate traffic between complainant's plant on the Pennsylvania R. R., and interchange track with the B. & O. at Kane, Pa., found unreasonable. Reasonable rates prescribed and reparation awarded. Thatcher Mfg. Co. v. Director General, 244.

Minima applicable on potatoes, of 36,000 pounds in cars the capacity of which is less than 1,615 cubic feet, found unreasonable to extent it exceeded 30,000 pounds. Reasonable rule prescribed and reparation awarded. Northern Potato Traffic Asso. v. C., B. & Q. R. R. Co., 385 (389).

Following recommendation in *Consolidated Classification Case*, 54 I. C. C., 1, charges on mixed carloads of sewer segment blocks and hollow building tile found unreasonable to extent they exceeded or may exceed charges on the basis of the highest carload rate and minimum attaching to any article in the load. Reparation awarded. Dickey Clay Mfg. Co. v. Director General, as Agent, 459.

Sixth-class rate of 22 cents per 100 pounds, minimum 50,000 pounds, on pyrites cinders from Wilmington, N. C., to Charleston, S. C., found unreasonable to extent it exceeded \$1.20 per long ton, minimum 60,000 pounds. Reparation awarded and reasonable maximum rate of \$1.50 per long ton, minimum 60,000 pounds, prescribed for the future. Charleston Ore Co. v. S. A. L. Ry. Co., 551.

Rates on refined petroleum products in tank-car loads from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unreasonable to extent that they may exceed by more than 3 cents per 100 pounds the rates on like traffic from the same points to Chicago, Ill. Wadhams Oil Co. v. Director General, as Agent, 597 (602).

Rates on heavy oils in tank-car loads from Kansas and Oklahoma to Milwaukee and Racine, Wis., found unreasonable to extent they may exceed 5 cents less than the rates on refined oils. *Id.* (602).

REDUCTION IN RATES—Continued.

By Commission—Continued.

Rate on sugar from New Orleans, La., to Mobile, Ala., found unreasonable to extent it exceeded 21.5 cents per 100 pounds. Reasonable rate prescribed and reparation denied for want of proof. *Mobile Chamber of Commerce v. Director General*, as Agent, 605.

Rates on sugar from New Orleans, La., and Savannah, Ga., to Montgomery, Ala., found unreasonable to extent they exceeded 29 and 31 cents per 100 pounds, respectively. Reasonable rates prescribed and reparation awarded. *Montgomery Chamber of Commerce v. Director General*, 610.

Combination rate legally applicable on infusorial earth from Lompoc, Calif., to Clarkdale, Ariz., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect via route of movement to Cedar Glade, Ariz., plus an arbitrary of 5 cents to destination. Reparation awarded and reasonable maximum rate prescribed. *United Verde Extension Mining Co. v. Director General*, 625.

Rates on petroleum and its products from Coffeyville, Kans., to Healdton, Okla., found unreasonable. Reasonable maximum rates prescribed and reparation awarded. *National Refining Co. v. Director General*, 663.

Rates on copper bullion from points in Arizona to Galveston, Tex., found unreasonable and reasonable maximum rates prescribed for the future. *Phelps Dodge Corp. v. Director General*, 714 (722).

Rates on smelter products from points in Arizona and Texas to Galveston, Tex., increased on June 25, 1918, by the Director General, found unreasonable and reasonable maximum interstate rates prescribed. *Anaconda Copper Mining Co. v. Director General*, 723 (735).

Following *Volker & Co.*, 55 I. C. C., 163, third class rate on congoieum from Marcus Hook, Pa., to Oklahoma City, Okla., found unreasonable to extent it exceeded lower commodity rate on oilcloth and linoleum. Reasonable rate prescribed and reparation awarded. *Congoieum Co. v. Director General*, as Agent, 757.

REFINING IN TRANSIT. See TRANSIT ARRANGEMENTS.

REFRIGERATION. See also PRE-COOLING.

Complaint alleging discrimination in the assessment of stated refrigeration charges on berries, domestic fruits, melons, and vegetables between points in western trunk line territory while in other territories charges were upon cost-of-ice basis, dismissed as issue considered in *Perishable Freight Investigation*, 56 I. C. C., 449. *Wisconsin & Michigan Fruit & Vegetable Jobbers Asso. v. A. & W. Ry. Co.*, 249.

Refrigeration charges on fruits and vegetables from Kansas and Missouri to Iowa and Nebraska, and between points in Iowa and points in Nebraska, not found unreasonable in the past. In view of the changed situation brought about by *Perishable Freight Investigation*, 56 I. C. C., 449, record affords no basis for finding with respect to present charges. *Nebraska-Iowa Fruit Jobbers Asso. v. Director General*, 426.

REFUND. See OVERCHARGES.

REFUSED SHIPMENT.

On shipment of cotton linters refused by consignee, combination class rate for return movement higher than rate applicable in the reverse direction not shown unreasonable. *Meridian Cellulose Co. v. Director General*, 283.

REHEARING. *See also* AMENDMENT OF COMPLAINT; REARGUMENT; SUPPLEMENTAL REPORT.

On rehearing, reparation awarded to complainant factors, as representatives of shippers, on account of charges found in original report, 50 I. C. C., 345, to have been illegally collected on shipments of cotton concentrated at Memphis, Tenn., and subsequently reshipped. *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.*, 212.

Complainant notified by telephone and written notice mailed showing car initials and numbers, but not the contents or originating points. Finding in original report, 52 I. C. C., 304, that arrival notices were in substantial compliance with tariff requirements, and that demurrage charges legally accrued, affirmed on rehearing. *Steinhardt & Kelly v. E. R. R. Co.*, 369.

RELATIONSHIP OF RATES.

Rate adjustments between points in zones 1, 2, 3, and 4, in North Carolina and Norfolk and Richmond, Va., and points in South Carolina and in the southeast; and between points in zones 1 and 2 in North Carolina and Norfolk and Richmond, and eastern ports and interior eastern points, found unduly prejudicial to the North Carolina points of Norfolk and Richmond. Reasonable relationship prescribed. *Corp. Commission of N. C. v. Director General*, 523.

Upon further hearing, original report 32 I. C. C., 272, modified and adjustment of rates on cotton from various points in Alabama and Georgia to Mobile, Ala., and Savannah, Ga., for export, found unduly prejudicial to Mobile and unduly preferential of Savannah in some instances and not in others. Reasonable relationship prescribed. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 554.

On coal from Illinois and Indiana mines, under which the rate to St. Louis, Mo., is 20 cents higher than to East St. Louis, Ill., held not to be improper, as East St. Louis, due to its location a short distance from the coal deposits, and on the near side of the Mississippi River, is entitled, within the reasonable limits of rate-making, to the benefits of that location. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (651).

RELATIVE ADJUSTMENT. *See also* ADJUSTMENT OF RATES.

Percentage basis applied in making rates between South Bend, Mishawaka, Elkhart, Goshen, Napanee, and Michigan City, Ind., and points in eastern trunk line and New England territories, found relatively unreasonable and unduly prejudicial of points in western and northern Ohio and southwestern Michigan. *South Bend Chamber of Commerce v. Director General*, 215.

Fact that other cities and towns would seek similar relief, and application of the formula would involve serious reductions in rates, while proper elements for consideration in determining the reasonableness of rates, constitute no bar to the granting of relief if rates are shown to be relatively unreasonable or unduly prejudicial. *Id.* (220).

Present adjustment on plaster and gypsum products from Grand Rapids, Mich., and points grouped therewith, to that portion of Wisconsin north of an east-and-west line drawn from Sheboygan to Prairie du Chien and to points in the upper peninsula of Michigan and the extreme eastern part of Minnesota, found unduly prejudicial as compared with rates to the same destinations from Fort Dodge, Iowa, and points grouped therewith. *Grand Rapids Plaster Co. v. Director General*, 264.

RELATIVE ADJUSTMENT—Continued.

Rate adjustments between points in zones 1, 2, 3, and 4, in North Carolina and Norfolk and Richmond, Va., and points in South Carolina and the southeast; and between points in zones 1 and 2 in North Carolina and Norfolk and Richmond, and eastern ports and interior eastern points, found unduly prejudicial to the North Carolina points of Norfolk and Richmond. Reasonable relationship prescribed. *Corp. Commission of N. C. v. Director General*, 523.

RELATIVE MILEAGE.

Commodity rates on citrus fruits, bananas, pineapples, and coconuts from New Orleans, La., and Mobile, Ala., to points in Arkansas should be re-adjusted to afford greater recognition to relative distances. Reasonable scale prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 231 (237).

RELATIVE RATES. *See also PREFERENCES AND PREJUDICES.*

Birmingham, Ala.: Rates on tar in tank-car loads from Nashville, Chattanooga, and Memphis, Tenn., New Orleans, La., Pensacola, Fla., and south Atlantic ports, and on creosote oil from New Orleans, to, not found unreasonable in comparison with those from same points of origin to other destinations in the southeast for similar distances. *Lewis Mfg. Co. v. A., B. & A. Ry. Co.*, 410.

Burkburnett, Tex.: Rate on crude petroleum in tank cars from, to Oklahoma City, Okla., found unreasonable to extent it exceeded rates to other materially farther distant Oklahoma points. Reparation awarded. *Atwood Refining Co. v. Director General*, 22.

Crestmore, Calif.: Rates on cement from, to Arizona points not found unreasonable as compared with rates in effect from Colton, Calif. *River-side Portland Cement Co. v. R., R. & P. R. R. Co.*, 291.

Huntington and West Huntington, W. Va.: Rates on glass sand from Ottawa, Ill., and related points to, found unreasonable as compared with rates to other points of equal or greater distance from Ottawa. Reparation awarded. *Boldt Co. v. Director General*, 259 (263).

Iowa points: Rates on common brick from points in Chicago switching district and Shermerville, Ill., to grouped points in eastern Iowa on the Illinois Central and Milwaukee not shown unreasonable or unduly prejudicial as compared with rates between points for comparable distances in the same general territory, but in certain instances found to violate the long-and-short-haul provision of section 4 of the act. Reparation denied. *Illinois Brick Co. v. Director General*, 320.

Midcontinent oil fields: Rates on petroleum and its products from, in Kansas and Oklahoma, to Eau Claire, Chippewa Falls, and Menomonie, Wis., not shown unreasonable or unduly prejudicial as compared with rates in effect to Durand, Wis., and Wabasha, Minn., and points in their vicinity. *Winona Oil Co. v. Director General*, 152.

Midlan, Kans.: Rate on an emergency shipment of new wrought-iron pipe from Beaumont, Tex., to, not found unreasonable as compared with rates from other nonproducing points in Texas and from Pittsburgh district. *Gulf Pipe Line Co. of Okla. v. T. & N. O. R. R. Co.*, 437.

Minnesota points: Rate on pickles, in brine, from New York Mills, Minn., to Omaha, Nebr., found unreasonable to extent it exceeded rate in effect from more distant points in Minnesota and subsequently established from New York Mills. Reparation awarded. *Haarmann Vinegar & Pickle Co. v. Director General*, 294 (295).

RELATIVE RATES—Continued.

North Baton Rouge, La.: Rates on liquefied petroleum gas, in tank-car loads, from Electra, Tex., to, found unreasonable to extent they exceeded rates in effect from Wichita Falls, Tex., to same destination. Reparation awarded. *Akin Gasoline Co. v. Director General*, 136.

North Carolina points: Rates on bituminous coal from the Appalachia group of mines in southwestern Virginia to Old Fort, N. C., when moving through Marion, N. C., not found unreasonable as compared with lower rates maintained to Canton, N. C., a farther distant point. Fourth section departure without authority and should be corrected. *Union Tanning Co. v. Director General*, 354.

Oklahoma points: Rates on iron and steel articles, in straight or mixed carloads, from Galveston and Houston, Tex., to, found unreasonable and unduly prejudicial as compared with rates applicable to merchant mixture, so called, from St. Louis, Mo., to Oklahoma points for similar distances. *Galveston Commercial Asso. v. Director General*, 390.

Roaring Spring, Pa.: Rates on pulp wood from points in Virginia to, found unreasonable and unduly prejudicial to extent they exceeded the rates in effect from same points of origin to Williamsburg, Pa. Reparation awarded. *Bare Paper Co. v. Director General*, as Agent, 320.

Southeastern and Carolina territories: Rates on cotton linters and cotton-seed hull shavings, and on sulphuric acid, in tank-car loads, from, to Hopewell, Va., not found unreasonable or discriminatory as compared with rates from same points of origin to Lake Junction, N. J. *Du Pont de Nemours Powder Co. v. Director General*, 54.

Sugar City and Blackfoot, Idaho: Rate on refuse molasses, in tank-car loads from, to Pine Bluff, Ark., found unreasonable to extent it exceeded rate from other producing points in the same general territory. Reparation awarded. *Snyder & Co. v. Director General*, 179.

Waterloo, Iowa: Rates on fresh meats and packing-house products from, to Macomb and Galesburg, Ill., not found unreasonable as compared with rates to Chicago, Ill., and between other points of origin and destination. *Rath Packing Co. v. Director General*, 170.

Wisconsin and Michigan points: Rates on toilet paper from Green Bay, Wis., to Muskogee, Okla., and on wrapping paper from points in Michigan and Wisconsin to destinations in Oklahoma, found unreasonable to extent they exceeded rates prescribed in *Adleta Paper Co.*, 31 I. C. C., 347, and *Wichita Traffic Bureau*, 51 I. C. C., 505. Reparation awarded. *Muskogee Wholesale Grocer Co. v. M., K. & T. Ry. Co.*, 125.

RELEASED RATES.

Following *Atlas Leather Mfg. Co.*, 55 I. C. C., 394, fifth-class rating, minimum 24,000 pounds, applied on scrap leather of a declared or agreed value not exceeding 3.5 cents per pound found unreasonable to extent it exceeded sixth-class, minimum 30,000 pounds. Reparation denied. *Atlas Leather Mfg. Co. v. N. Y., N. H. & H. R. R. Co.*, 481.

RELINQUISHMENT.

Short line formerly under federal control and subsequently relinquished. *P., A. & McK. R. R. Co. v. Director General*, 1 (2).

REOPENING. See **AMENDMENT OF COMPLAINT; REARGUMENT; REHEARING; SUPPLEMENTAL REPORT.**

REPARATION. See **DAMAGES.**

RESHIPPING RATES.

On further hearing, reparation awarded on basis of finding in original report, 37 I. C. C., 441, in which rates on anthracite coal, prepared and pea sizes, from Lehigh coal region of Pennsylvania, to Perth Amboy, N. J., for transshipment by water, were found unreasonable to extent they exceeded rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Markle Co. v. L. V. R. R. Co.*, 375.

In original report, 38 I. C. C., 206, reparation awarded on account of unreasonable rates on anthracite coal from Lehigh coal region of Pennsylvania to Elizabethport, N. J., for transshipment by water, on erroneous basis of local rates. Upon supplemental report, former finding corrected and reparation awarded on basis of reshipping rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Dodson & Co. (Inc.) v. C. R. R. Co. of N. J.*, 381.

Upon further hearing reparation awarded on basis of finding in original report, 38 I. C. C., 333, in which rates on anthracite coal in prepared and pea sizes from Wyoming anthracite coal region of Pennsylvania to Elizabethport, N. J., for reshipment by water, were found unreasonable to extent they exceeded rates prescribed in *Anthracite Case*, 35 I. C. C., 220. *Meeker & Co. v. C. R. R. Co. of N. J.*, 414.

Upon further hearing and following *Meeker & Co.*, 57 I. C. C., 414, reparation awarded on basis of rates found reasonable in *Anthracite Case*, 37 I. C. C., 460, on anthracite coal, in prepared and pea sizes, from Red Ash colliery, in the Wyoming coal region of Pennsylvania to Elizabethport, N. J., for reshipment by water. *Red Ash Coal Co. v. C. R. R. Co. of N. J.*, 432.

Following *Anthracite Case*, 35 I. C. C., 220, application of rates on anthracite coal from Wayne washery, Clemo, Pa., to Undercliff (Edgewater), N. J., for reshipment by water, upon basis of rates from Wyoming region, found unreasonable as to pea sizes, but on sizes smaller than pea not found unreasonable, discriminatory or unduly prejudicial. Reparation awarded. *Meeker v. E. R. R. Co.*, 434.

RESOLUTION.

Report of Commission to Senate Resolution No. 376, relative to order of April 15, 1920, entitled "Notice to carriers and shippers." Assignment of Freight Cars, 760.

RESTORED RATES.

Following *Industrial Railways Case*, 29 I. C. C., 212, absorption of charges of the La Salle & Bureau County R. R., on traffic to and from complainant's plant canceled. Following second report, 32 I. C. C., 129, absorption restored. *Held*: Rates unreasonable and unduly prejudicial during interim to extent they exceeded charges in addition to line-haul rates. Reparation awarded. *Matthiessen & Hegeler Zinc Co. v. C. & B. & Q. R. R. Co.*, 173.

Rate on cypress lumber increased 1 cent following *Fifteen Per Cent Case*, 45 I. C. C., 303, but order in that case did not authorize any increase and joint rate subsequently reduced 1 cent. Reparation awarded on basis of rate subsequently established. *Pine Plume Lumber Co. v. Director General*, as Agent, 501.

Rate increased and subsequently restored to former level. *Held*: Rate charged during interim not found unreasonable as it was not disproportionate to rates on the same commodity to other points in the same general territory, and the reduction of a rate is not of itself conclusive evidence of the unreasonableness of the rate reduced. *Thomas Iron Co. v. Director General*, as Agent, 657.

RETURN.

While the shipper is entitled to a reasonable rate the carrier is at the same time entitled to a reasonable return, and carriers are entitled to reasonable rates for the service they render even though those rates may be such that shippers can not do business at a profit. *Anaconda Copper Mining Co. v. Director General*, 723 (732).

RETURN MOVEMENT.

On shipment of cotton linters refused by consignee, combination class rate for return movement higher than rate applicable in the reverse direction not shown unreasonable. *Meridian Cellulose Co. v. Director General*, 283.

RETURNED EMPTIES.

Rule of the consolidated classification providing basis of charges for the transportation of sulphuric acid and chloride of zinc remaining in tank cars, returned to original loading points, not found unreasonable or unduly prejudicial as compared with rule for return of empty gas cylinders and wooden tank cars containing a portion of the commodity therein. *New Jersey Zinc Co. v. Director General*, 201.

REVENUE. See EARNINGS.

REVERSAL.

Former finding, 55 I. C. C., 462, that rates on iron and steel articles from Chicago, Ill., Terre Haute and Vincennes, Ind., to Pacific coast ports, for export, were not unduly prejudicial in favor of Pittsburgh, Pa., reversed on reargument. *Inland Steel Co. v. Director General*, 339.

RIGHT OF SHIPPER.

Fact that complainant may have had another route to another port by which lower rates applied did not affect his right to ship over defendant's line and to be accorded reasonable rates for the service performed. *Meeker & Co. v. C. R. R. Co. of N. J.*, 414 (416).

Fact that certain shipments may have moved at rates which were subsequently increased can not be considered as mitigating damages due to the collection of unreasonable rates upon other shipments of the same or different commodities. The right of a shipper to recover damages accrues when he pays an unreasonable rate, and the law does not inquire into later events. *Id.* (416).

ROUTES.

Crossties sold under contract to railroad company, providing for delivery f. o. b. Louisville, Ky., moved as routed under through bill of lading to destinations beyond. Allegation that rates charged were unreasonable as lower joint rate applicable via Cairo, Ill. *Held*: Rates in accordance with routing instructions not applicable through Louisville by way of Cairo as lower rate implied a continuous movement beyond Cairo and for movement via that point through Louisville would entail a back haul. *Wright Tie Co. v. B. S. W. R. Co.*, 286.

Following *Northern Pacific Ry. Co. v. Solum*, 247 U. S., 477, the reasonableness of a particular routing of traffic as between two routes, one interstate and one intrastate, is an administrative question whose determination is within the Commission's jurisdiction. *Woodbury Lumber Co. v. Director General*, 324 (325).

Shipments tendered unrouted. Lower rate in effect via route other than route of movement. *Held*: Shipment misrouted and reparation awarded. *Du Pont de Nemours & Co. v. Director General*, 361.

ROUTES—Continued.

Fact that complainant may have had another route to another port by which lower rates applied, did not affect his right to ship over defendant's line and to be accorded reasonable rates for the service performed. *Meeker & Co. v. C. R. R. Co. of N. J.*, 414 (416).

Route beyond compression point, over which tariff provided for refund of inbound freight charges if shipments forwarded outbound within 12 months, embargoed. Although no instructions for reshipment given, carrier forwarded via route over which this provision did not apply. *Held*: Shipments misrouted and reparation awarded. *Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co.*, 486.

Rate on pig iron from Birmingham, Ala., to McGill, Nev., not found unreasonable as compared with lower rate via another route, which rate was subsequently established via route of movement. *Tuffill Bros. Pig Iron & Coke Co. v. L. & N. R. R. Co.*, 491.

The mere fact that a lower rate applied over another route, which rate was subsequently established via route of movement, does not establish the unreasonableness of the rate via route of movement. *Id.* (492).

Shipment reconsigned after arrival at originally billed destination without routing instructions. Carrier forwarded via point taking combination rate. Lower joint rate in effect via another point which was not restricted in its application to any particular route. *Held*: Shipment misrouted and reparation awarded. *Carolina Portland Cement Co. v. Director General*, 496.

Lower rate in effect, consistent with complainant's routing instructions, via route other than route of movement. *Held*: Shipments misrouted and reparation awarded. *Brown & Sons Lumber Co. v. Director General*, 509.

Bills of lading contained rate but no routing instructions. Shipments forwarded by carrier over route taking higher rate than that named in bills of lading. *Held*: Shipments misrouted and reparation awarded. *Highland Iron & Steel Co. v. E. & I. R. R. Co.*, 549.

Combination rates assessed on shipments of bituminous coal, originally consigned to the Reading R. R., but held at Rutherford, Pa., and diverted by the U. S. Fuel Administrator to Coatesville, Pa., not found unreasonable. Although lower joint rate applied via the customary route through Elsmere Junction, Del., defendants were in no way responsible for the routing of these shipments which moved over the only practical route from the diversion point. *Lukens Steel Co. v. Director General*, 621.

ROUTING INSTRUCTIONS.

Bill of lading contained instructions as to party to be notified at reconsignment point together with notation "to be reconsigned to Lansing" but did not name party to whom notice should be sent at the latter point. Carrier reconsigned the shipment to ultimate destination where demurrage accrued. *Held*: Carrier at fault in accepting and moving the shipment under ambiguous instructions contained in the bill of lading and demurrage charges illegally assessed. Reparation awarded. *Gill-Andrews Lumber Co. v. Director General*, 493.

Initial carrier failed to divert shipment to point specified by shipper, where it later arrived. *Held*: Routing instructions violated, but no damage resulted, as same rate applied via route of movement as over route specified by shipper. *Lowry Lumber Co. v. Director General*, 623.

RULES OF PRACTICE. *See* ADMINISTRATIVE RULING; PLEADING AND PRACTICE.

ST. LOUIS, TROY & EASTERN RAILROAD COMPANY.

Found to be a common carrier, which may lawfully receive from its trunk-line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *St. Louis, Troy & Eastern R. R. Co.*, 371.

History and description of. *Id.* (373).

SCALE OF RATES. *See* DISTANCE RATES.

SCALE WEIGHT. *See* WEIGHT.

SCRAP IRON. *See* JUNK.

SECTION 1.

Clause of section 1 of the act which defines transportation as including terminal delivery is jurisdictional, and does not affect the measure of the rate or relationship of rates for the terminal service included within the transportation. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (653).

Paragraph (12) of section 1 of the interstate commerce act, as amended by section 401 of the transportation act, 1920, setting forth duty of carriers relative to distribution of cars and maintenance of just and reasonable mine ratings, quoted. *Assignment of Freight Cars*, 760 (765).

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, setting forth authority of Commission to suspend operation of car service rules, and to make just and reasonable directions with respect thereto. *Id.* (765).

Paragraph (12) of section 1 of the interstate commerce act does not change the rule of law as laid down in the *Hocking Valley Case*, 12 I. C. C., 398, and the *Traer Case*, 13 I. C. C., 451, governing distribution of cars in accordance with the relative ratings of the mines, but states in statutory form that which had theretofore been the law pursuant to the decisions of the Commission and of the Supreme Court. *Id.* (766).

Paragraph (15) of section 1 of the interstate commerce act, as amended by section 402 of the transportation act, 1920, authorizes the Commission to direct priorities in transportation. *Id.* (766).

SECTION 3.

Rules and regulations for the prompt payment of transportation rates and charges as provided in section 3 of the act to regulate commerce as amended by section 405 of the transportation act, 1920, prescribed. *Regulations for Payment of Rates and Charges*, 591.

SECTION 4. *See* LONG AND SHORT HAUL; THROUGH AND LOCAL.

SECTION 5.

The ownership by the U. S. Steel Corporation of the stock of both the U. S. Steel Products Co. and the several applicant rail carriers, held to constitute an interest within the meaning of section 5 of the act by rail lines in water lines owned and operated by the Products Company. *Application of United States Steel Products Co.*, 513 (515).

Charges the Commission only with the duty of determining whether or not competition for traffic between the owning rail carriers and their boat lines through the Panama Canal does or may exist, and in doing this weight must be given to actual conditions at the present time. *Id.* (516).

SECTION 15.

Section 15 of the act, intended to provide against excessive allowances, quoted. *Waste Merchants Asso. v. Director General*, 686 (689-690).

SET UP AND KNOCKED DOWN.

If rails and ties had not been fastened together lower commodity rate would properly have applied but the joining of the two into portable railway tracks, in sections, excluded them from that item. *Lakewood Engineering Co. v. Director General*, 311 (314).

SHORT HAUL TRAFFIC.

Owing to the short haul on coal from mines in Illinois and Indiana, the volume of the rate to East St. Louis, Ill., held to be insufficient, without an undue depletion of line-haul revenues, to require the absorption of the differential of 20 cents to St. Louis, Mo., which is the charge of the Terminal R. R. Asso. of St. Louis for the transfer across its Mississippi River bridges and ferries and its delivery in St. Louis. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (647).

SHORT LINE.

Pittsburgh, Allegheny & McKees Rocks R. R. Co. found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *P., A. & McK. R. R. Co. v. Director General*, 1.

Pittsburgh, Allegheny & McKees Rocks R. R. Co., history and description of. *Id.* (2-3).

Delray Connecting R. R. Co. found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *Delray Connecting R. R. Co.*, 97.

Delray Connecting R. R. Co., history and description of. *Id.* (97-99).

Springfield Terminal Ry. Co. found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (280).

Springfield Terminal Ry. Co., history and description of. *Id.* (274-276).

St. Louis, Troy & Eastern R. R. Co. found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges, under appropriate tariffs. *St. Louis, Troy & Eastern R. R. Co.*, 371.

St. Louis, Troy & Eastern R. R. Co., history and description of. *Id.* (373).

La Salle & Bureau County R. R. found to be a common carrier. *Matthiesen & Hegeler Zinc Co. v. C., B. & Q. R. R. Co.*, 173 (176).

SHRINKAGE.

On yellow-pine lumber, charges assessed on basis of weight obtained at first weighing point en route. Due to shrinkage, weight at destination found less. *Held*: Charges based on weight obtained at first weighing point en route, not unreasonable. *Lowry Lumber Co. v. Director General*, 503.

SPARSITY OF TRAFFIC.

One factor of through rate canceled prior to movement and higher combination rate than charged legally applicable. *Held*: Shipment undercharged and rate legally applicable not shown unreasonable, due to sparsity of traffic and unfavorable and expensive operating conditions in the territory involved. *Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co.*, 39.

SPARSITY OF TRAFFIC—Continued.

Due to sparsity of traffic and difficult operating conditions via route of movement and in the territory involved, rates on a sporadic shipment of coal not shown to have been unreasonable. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 300 (302).

SPECIAL TRAIN.

Charges for intrastate passenger-train service, upon basis of special-train rates, found illegally assessed as the train was not reserved for the exclusive use of the complainant's employees and under the governing tariff was not a special train but an extra train for which regular passenger-train service rates should have been collected. Reparation awarded *LaSalle County Carbon Coal Co. v. Director General*, 367.

SPORADIC MOVEMENT.

Due to abandonment of mining in territory involved, no other movement of second-hand mining machinery has taken place either before or since the one under consideration. Rates charged not unreasonable. *Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co.*, 39 (40).

No other shipment of cotton or linters had ever moved from Nobel, Ont., to Meridian, Miss., and no other movement is expected. *Meridian Cellulose Co. v. Director General*, 283 (284).

Due to sparsity of traffic and difficult operating conditions via route of movement and in the territory involved, rates on a sporadic shipment of coal not shown to have been unreasonable. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 300 (302).

Rate on an emergency shipment of new wrought-iron pipe from Beaumont, Tex., to Midian, Kans., not found unreasonable as compared with rates from other nonproducing points in Texas and from Pittsburgh district. *Gulf Pipe Line Co. of Okla. v. T. & N. O. R. R. Co.*, 437.

SPOTTING CARS.

Request for order compelling defendants to render spotting service at Hog Island shipyard, without charge in addition to line-haul rates, or to make allowance therefor, denied, as changed conditions no longer require defendants to provide such service which would constitute a reduction in the line-haul rates which have not been proven unreasonable. *American International Shipbuilding Corp. v. P. R. R. Co.*, 90.

Switching and spotting service performed by defendants for industries in the Birmingham district without charge not shown unduly prejudicial to complainant who performs its own service within its plant at Bessemer, Ala., with its own power, and for which no allowances are made. Services accorded the alleged preferred industries are dissimilar to those performed by complainant which services defendants should not be required to render or for which allowances should be paid. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 442.

On complaint that allowances for spotting cars within complainant's plant at Burlington, N. J., is inadequate, *Held*: Without passing upon the Commission's power to order an increased allowance, complainant has not demonstrated the propriety of an increased allowance for the spotting service in question. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677.

Complainant neither requested defendant to perform spotting service nor signified willingness to permit defendant to do so with its equipment. *Held*: To render with its own equipment all the transportation service which it is obliged to perform is defendant's unquestionable right. *Id.* (691).

SPOTTING CARS—Continued.

Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate is important evidence that the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. *Id.* (682-683).

Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery. As the magnitude of the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. *Id.* (683).

To comply with the legal obligation of delivery a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. *Id.* (683).

It is not satisfactorily established that the legal obligation of a carrier goes to the extent of requiring it to spot cars at places of unloading or to take cars from places of loading within a plant. Obligation as to delivery may have been complied with when the cars are placed on interchange track or on the spur within the plant connecting with the interchange track. *Id.* (683-684).

Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive either team-track or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such industry, or that the line-haul rates have been rendered unreasonable or otherwise unlawful by the withdrawal of the spotting service by the line-haul carrier or its failure to reimburse the industry for the entire cost of the spotting service which the latter performs. *Id.* (684).

Practice of defendants in refusing to spot cars at complainant's plant in the Buffalo rate district or to make allowances to complainant for performing the service, while performing spotting service or making allowances to complainant's competitors in the same rate district, found to result in undue prejudice. Reparation denied. *Donner Steel Co. v. D., L. & W. R. R. Co.*, 745.

SPREAD IN RATES.

Reparation awarded on shipments of coke from Seaboard, N. J., to Hellertown, Pa., in so far as spread in rates between these points exceeded by more than 25 cents the rates from Seaboard to Bethlehem, which basis was subsequently established. *Thomas Iron Co. v. Director General*, 505.

SPRINGFIELD TERMINAL RAILWAY COMPANY.

Found to be a common carrier which may lawfully receive from its trunk line connections reasonable divisions of joint rates or absorptions of switching charges under appropriate tariffs. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (280).

History and description of. *Id.* (274-276).

STANDARD TIME. *See Time.*

STATE AND INTERSTATE.

Following *Northern Pacific Ry. Co. v. Solum*, 247 U. S., 477, the reasonableness of a particular routing of traffic as between two routes, one interstate and one intrastate, is an administrative question whose determination is within the Commission's jurisdiction. *Woodbury Lumber Co. v. Director General*, 324 (325).

STATE RATES.

Tariff rule initiated by Director General providing for minimum weights on intrastate shipments of lignite based upon marked capacity of car found unreasonable, and rule subsequently established, under which marked capacity of car except where loaded to full visible capacity, in which case actual weight will govern, found to be a reasonable rule. *San Antonio Freight Bureau v. Director General*, 45.

By section 10 of the federal control act, authority to determine the justness and reasonableness of tariff rule initiated by President through Director General, and to award reparation on intrastate shipments moving thereunder is vested in the Commission. *Id.* (46).

The Commission's jurisdiction to award reparation on intrastate shipments is confined to the period of federal control. *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 274 (275).

On coal from Colliery, Ill., a point in the Springfield group, to destinations within the state of Illinois, found unduly prejudicial to extent they exceeded the rates from other points in the same group to same destinations. *Id.* (280).

On copper ore and on lime rock, increased under General Order No. 28 specified amounts per ton, aggregating increases in excess of 25 per cent not found unreasonable or otherwise unlawful. *Calumet & Arizona Mining Co. v. Director General*, 332.

Duty of Determining the justness and reasonableness of intrastate rates initiated by the Director General is upon the Commission. *Id.* (333).

Charges for intrastate passenger-train service, upon basis of special-train rates, found illegally assessed, as the train was not reserved for the exclusive use of complainant's employees and under the governing tariff was not a special train but an extra train for which regular passenger-train service rates should have been collected. Reparation awarded. *LaSalle County Carbon Coal Co. v. Director General*, 367.

Class rates on cypress lumber from New Orleans, La., to Violet, Phoenix, and Pointe-a-la-Hache, La., found unreasonable to extent they exceeded lower commodity distance scale subsequently established by Director General. Reparation awarded. *St. Bernard Cypress Co. v. Director General*, as Agent, 489.

Sixth-class rate on coal ashes and cinders from Jersey City, N. J., to Rahway and Woodbridge, N. J., exceeded lower commodity rates subsequently established. Reparation awarded. *Philadelphia Quartz Co. v. Director General*, as Agent, 632.

STATE RATES—Continued.

Sixth-class rate on coal ashes and cinders from Perth Amboy, N. J., to Rahway, N. J., found unreasonable to extent it exceeded lower commodity rate from Jersey City, N. J., to Carteret, N. J. Reparation awarded. *Id.* (633).

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

STOPPAGE IN TRANSIT.

Rules applicable on straight carloads of agricultural implements, other than hand, or when mixed with centrifugal cream separators, permitting stoppage in transit partly to unload and storage in transit, not shown to result in unjust discrimination in favor of agricultural implements. *De Laval Separator Co. v. A. & R. R. Co.*, 668 (676).

STORAGE IN TRANSIT. *See* TRANSIT ARRANGEMENTS.SUBSEQUENTLY ESTABLISHED RATES. *See* REDUCTION IN RATES (BY CARRIERS).SUPPLEMENTAL REPORT. *See also* AMENDMENT OF COMPLAINT; REARGUMENT; REHEARING.

Classification to apply on door and window casings and frames, made of iron or steel, or wood covered with iron or steel or tin, prescribed in original report, 55 I. C. C., 402, modified herein to conform to findings applicable to these articles as set forth in *Consolidated Classification Case*, 54 I. C. C., 1. *Dahlstrom Metallic Door Co. v. E. R. R. Co.*, 52.

In original report, 38 I. C. C., 206, reparation awarded on account of unreasonable rates on anthracite coal from Lehigh coal region of Pennsylvania, to Elizabethport, N. J., for transshipment by water, on erroneous basis of local rates. Upon supplemental report, former finding corrected and reparation awarded on basis of reshipping rates prescribed in *Anthracite Case*, 35, I. C. C., 220. *Dodson & Co. (Inc.) v. C. R. R. Co. of N. J.*, 381.

Petition to modify orders defining limits of standard central and mountain time zones, 51 I. C. C., 273 and 555, so as to include the panhandles of Texas and Oklahoma within standard central time zone, denied. *Standard Time Zone Investigation*, 455 (458).

Order defining limits of standard eastern time zone 53 I. C. C., 208, modified so as to include Mount Vernon, Ohio, within the standard eastern time zone. *Id.* (459).

In the exercise of "that flexible limit of judgment which belongs to the power to fix rates," finding in former reports, 39 I. C. C., 88, and 45 I. C. C., 248, denying reparation on precooled and pre-iced oranges from California points to destinations in other states and in Canada, reaffirmed on reargument. *Arlington Heights Fruit Exchange v. S. P. Co.*, 580.

Upon further consideration, rates on bituminous coal from Appalachia and Dante districts in Virginia to Spartanburg, Union, and other points in South Carolina taking same or related rates, found unreasonable during specified periods, to extent they exceeded rates found reasonable in *Bituminous Coal Rates to the Southeast*, 37 I. C. C., 652, and 53 I. C. C., 741, and reparation awarded. *Cotton Manufacturers' Assn. of S. C. v. C., C. & O. Ry.*, 584 (587, 589).

SWITCHING. *See also* ABSORPTION; FERRY CAR CHARGES; SPOTTING CARS.

Charges for switching interstate traffic between complainant's plant on the Pennsylvania and that carrier's interchange track with the Baltimore & Ohio at Kane, Pa., found unreasonable. Reasonable rates prescribed and reparation awarded. *Thatcher Mfg. Co. v. Director General*, 244.

SWITCHING—Continued.

Charges for service of delivery from one carrier to another should not exceed the line-haul rate by more than 2 cents per 100 pounds. *Id.* (247).

Switching and spotting service performed by defendants for industries in the Birmingham district without charge not shown unduly prejudicial to complainant who performs its own service within its plant at Bessemer, Ala., with its own power, and for which no allowances are made. Services accorded the alleged preferred industries are dissimilar to those performed by complainant which services defendants should not be required to render or for which allowances should be paid. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 442.

Refusal of defendants to increase the amount of their absorption of complainant's switching charges on shipments between points on complainant's line and points of interchange with defendant's lines, not found unlawful as the amount complainant would secure for its switching service would still remain the same and it would not be benefited thereby, whereas consignees and shippers would pay less and the trunk lines more. *Cuyahoga Valley Ry. Co. v. Director General*, 660.

Perhaps the most common form of delivery is the setting of a car on team-tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and substitute for team-track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main tracks. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (682).

In testing the extent of a carrier's legal obligation as to delivery of c. l. freight, the extent of the service involved in a typical team-track delivery or in the typical shunting of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery—are entitled to primary consideration. *Id.* (683).

Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of c. l. traffic. As the magnitude of the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. *Id.* (688).

To comply with the legal obligation of delivery, a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. *Id.* (683).

Allowances to large industries have developed until in many instances they are little better than undue preferences, and represent service which the Commission would *ab initio* long hesitate to direct a carrier to render in effecting delivery of c. l. freight. They are frequently compelled by the fear of loss of large tonnage, deplete unnecessarily the revenues of carriers and thus tend to shift the burden of paying for such expensive deliveries from the shoulders of the recipients to other shippers who receive only average delivery service. *Id.* (684).

TARIFF CIRCULAR. See ADMINISTRATIVE RULING.
TARIFF RULE.

Initiated by Director General providing for minimum weights on intrastate shipments of lignite, based upon marked capacity of car, found unreasonable, and rule subsequently established under which marked capacity of car, except where loaded to full visible capacity, in which case actual weight will govern, found to be a reasonable rule. *San Antonio Freight Bureau v. Director General*, 45.

By section 10 of the federal control act, authority to determine the justness and reasonableness of tariff rule initiated by President through Director General, and to award reparation on intrastate shipments moving thereunder is vested in the Commission. *Id.* (46).

Defendant's diversion rules in so far as excluding bituminous coal in hopper or self-clearing cars, found to have been unreasonable at time of movement to extent that charges thereunder exceeded those on basis of a rule providing for diversion from point of origin to final destination at through rates plus a diversion charge of \$2. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, 461 (464).

TAX. See WAR TAX.

TEAM TRACK.

Perhaps the most common form of delivery is the setting of a car on team-tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and substitute for team-track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main tracks. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (682). Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of c. l. traffic. As the magnitude of the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. *Id.* (683).

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS.

Fact that lines bringing coal from Illinois and Indiana mines to East St. Louis, Ill., as a part of the transportation to St. Louis, Mo., are proprietary lines of the Terminal R. R. Asso. of St. Louis, does not require, as a matter of correct legal interpretation, the application of a common rate to the two districts; nor is it material to the issue whether those cities are to be viewed as comprising a single industrial and economic unit. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (652).

TERMINAL SERVICE.

Clause of section 1 of the act which defines transportation as including terminal delivery is jurisdictional, and does not affect the measure of the rate, or relationship of rates, for the terminal service included within the transportation. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (658).

THROUGH AND LOCAL.

Commodity rate on brick from Chattanooga, Tenn., to Asheville, N. C., exceeded the aggregate of intermediate rates to and from Knoxville, Tenn. Measure of reasonable rate prescribed and reparation awarded. *Key-James Brick Co. v. S. Ry. Co.*, 296.

THROUGH AND LOCAL—Continued.

Ninth-class rate on scrap iron from St. Louis, Mo., to Litchfield, Ill., exceeded the aggregate of intermediate rates to and from East St. Louis, Ill. Measure of reasonable rates prescribed and reparation awarded. *Cohen-Schwartz Rail & Steel Co. v. Director General*, 298.

Joint through rate on copra-oil meal from Undercliff, N. J., and Port Ivory, Staten Island, N. Y., to Hammond, Ind., exceeded aggregate of intermediate rates to and from Buffalo, Black Rock, and Suspension Bridge, N. Y. Reparation awarded and measure of reasonable rates prescribed. *Chaplin & Co. v. Director General*, 363.

Joint rates on medicines from Binghamton, N. Y., to Chattanooga and Memphis, Tenn., exceeded the aggregate of intermediate rates to and from Cincinnati, Ohio, and Cairo, Ill., respectively. Reparation awarded and measure of reasonable maximum rates prescribed. *Kilmer & Co. (Inc.) v. Director General, as Agent*, 453.

A through rate which exceeds the aggregate of intermediate rates subject to the interstate commerce act is *prima facie* unreasonable. *Id.* (454).

Express rates on cherries from Lewiston, Idaho, and Union, Oreg., to Regina, Saskatchewan, Canada, exceeded the aggregate of intermediate rates to and from Spokane, Wash. Reparation awarded. *White Bros. & Crum Co. v. Director General*, 511.

Joint rate on peanuts from Suffolk, Va., to El Paso, Tex., subsequently reduced to basis of the aggregate of intermediate rates. Reparation awarded. *Taylor & Smith v. Director General*, 520.

Joint rates on sweet-clover seed from Wheatland, Wyo., to Kansas City, Mo., exceeded the aggregate of intermediate rates in effect to and from Cheyenne, Wyo. Reparation awarded. *Rudy-Patrick Seed Co. v. Director General, as Agent*, 637.

Rates on petroleum and its products from Coffeyville, Kans., to Healdton, Okla., exceeded the aggregate of intermediate rates. Reparation awarded. *National Refining Co. v. Director General*, 663.

Joint class rate charged on oats from Chicago, Ill., to Picayune, Miss., found to have been legally applicable, but unreasonable to extent it exceeded the aggregate of intermediate rates to and from East St. Louis, Ill. Reparation awarded. *Hines Lumber Co. v. Director General*, 701.

A joint rate is *prima facie* unreasonable when and to the extent that it exceeds the aggregate of intermediate rates subject to the act. *Id.* (702).

TIME.

Petition to modify orders defining limits of standard central and mountain time zones, 51 I. C. C., 273 and 555, so as to include the panhandles of Texas and Oklahoma within standard central time zone, denied. *Standard Time Zone Investigation*, 455 (458).

To change the limits of a time zone for purpose of providing a community with fast or slow time would distort the several zone boundaries, which should coincide as nearly as practicable with the median meridians. The desire of banking and mercantile business to have their standard time the same as that of correspondents, if carried out without regard to the time meridians, would result in the whole country being placed in one time zone. *Id.* (458).

Order defining limits of standard eastern time zone, 53 I. C. C., 208, modified so as to include Mount Vernon, Ohio, within the standard eastern time zone. *Id.* (459).

TITLE.

A rate can not be limited in its application to individual shippers. *Texas Co. v. Director General*, 48 (51).

TON-MILE REVENUE. See also EARNINGS.

Comparisons of, are of little value without consideration of the nature of the traffic. *Corporation Commission of North Carolina v. Director General*, 523 (533).

The process of comparing rates by ton-mile figures is one by which those rates may be brought down to the narrowest point of scrutiny and in this sense the ton-mile test is valuable, but it is only one test and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, regardless of how compulsory or imperious they may be. *Anaconda Copper Mining Co. v. Director General*, 723 (730).

TONNAGE. See DENSITY OF TRAFFIC; SPARSITY OF TRAFFIC.**TOWING.**

Embargo in effect at billed destination. Car reconsigned but complainant failed to request change in name of consignee. Upon arrival at new destination consignee could not be located and complainant did not give delivery instructions until after receipt of a second telegram. Delivery again not affected due to accrued demurrage and car was towed across the river and subsequently towed back and delivered. *Held*: Demurrage and towage charges not unreasonable or otherwise unlawful. *Currie & Campbell v. Director General*, 450.

TRANSCONTINENTAL RATES.

There is no requirement of law that origin and destination groups shall be coextensive in area. In the adjustment of transcontinental rates it may be said to be the usual practice for origin group rates to apply to destination points singly or grouped only a few together. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (648).

TRANSFER.

Owing to the short haul on coal from mines in Illinois and Indiana, the volume of the rate to East St. Louis, Ill., held to be insufficient, without an undue depletion of line-haul revenues, to require the absorption of the differential of 20 cents to St. Louis, Mo., which is the charge of the Terminal R. R. Asso. of St. Louis for the transfer across its Mississippi River bridges and ferries and its delivery in St. Louis. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (647).

Charges in excess of those which would have accrued at through rates plus legally applicable reconsigning charges found to have resulted from the unlawful refusal of carriers to permit reconsignment in accordance with their tariffs, on shipments transferred into other cars at reconsignment point on account of operating rules which prohibited cars moving off the lines of the carriers. Reparation awarded. *Schuette & Co. v. Director General*, 709.

TRANSIT ARRANGEMENTS.

Creosoting: Rate and switching charge on crossties from St. Elmo and other Illinois points to Chicago, Ill., stopped at Terre Haute, Ind., for creosoting, found unreasonable to extent they exceeded lower rate and switching charge subsequently established. Reparation awarded. *Three States Tie Co. v. C. & E. I. R. R. Co.*, 24.

TRANSIT ARRANGEMENTS—Continued.

Refining: Failure of defendants to establish refining-in-transit arrangement at Baltimore, Md., on shipments of smelter products moving from points principally in the west, not found unreasonable, discriminatory, or unduly prejudicial. *Anaconda Copper Mining Co. v. Director General*, 723 (738).

Storage: Rules applicable in straight carloads of agricultural implements, other than hand, or when mixed with centrifugal cream separators, permitting stoppage in transit partly to unload and storage in transit not shown to result in unjust discrimination in favor of agricultural implements. *De Laval Separator Co. v. A. & R. R. Co.*, 668 (676).

TRANSPORTATION.

Clause of section 1 of the act which defines transportation as including terminal delivery is jurisdictional, and does not affect the measure of the rate, or relationship of rates, for the terminal service included within the transportation. *St. Louis Chamber of Commerce v. B. & O. R. R. Co.*, 639 (653).

Complainant neither requested defendant to perform spotting service nor signified willingness to permit defendant to do so with its equipment. **Held:** To render with its own equipment all the transportation service which it is obligated to perform is defendant's unquestionable right. *United States Cast Iron Pipe & Foundry Co. v. Director General*, 677 (681).

TRANSPORTATION CONDITIONS. See also OPERATING CONDITIONS.

Where substantially similar, the Commission has never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over his competitor located at the latter. *Cornell v. L. V. R. R. Co.*, 157 (161).

It can not be seriously contended that transportation conditions during the period of federal control and at the present time may be fairly compared with those existing more than seven years ago. *Phelps Dodge Corp. v. Director General*, 714 (718).

TRANSPORTATION FACILITIES.

Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for proposed increased rates on newspapers. *Newspapers on Passenger Cars*, 743 (744).

VAIN ACT.

The law does not require the performance of a vain act. *Schuetz & Co. v. Director General*, 709 (712).

VALUE. See also PRICE; RELEASED RATES.

Value and density are important considerations in determining ratings of commodities but they must be used in conjunction with the other elements of classification. *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 206 (209).

Value is an essential factor of a reasonable rate but is only one of the elements that must be considered. Other elemental tests must be applied of which a comparison of revenue under the rates attacked with revenue derived from the transportation of other commodities under similar circumstances and conditions is one of considerable importance. *Anaconda Copper Mining Co. v. Director General*, 723 (731, 732).

VOLUME OF TRAFFIC. See DENSITY OF TRAFFIC; SPORADIC MOVEMENT.

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

WAR.

Service of loading waste paper stock, provided for in tariffs, was not rendered due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. *Held*: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload, outweighed expense of loading with their own employees, for which service there was no obligation on part of carriers to make an allowance. *Waste Merchants Assn. v. Director General*, 686.

WAR TAX.

The Commission is without power to order refund of war taxes. *San Antonio Freight Bureau v. Director General*, 45 (47); *Akin Gasoline Co. v. Director General*, 133 (135); *New Jersey Power & Light Co. v. Director General*, 147 (148); *General Chemical Co. v. Director General*, 222 (226); *Koenig Coal Co. v. G. T. Ry. Co.*, 241 (243); *Boldt Co. v. Director General*, 259 (263); *Woodbury Lumber Co. v. Director General*, 324 (326); *Bare Paper Co. v. Director General*, 329 (331); *Kilmer & Co. (Inc.) v. Director General, as Agent*, 453 (454); *Du Pont de Nemours & Co. v. Director General*, 461 (464); *Ozark Cooperage & Lumber Co. v. Director General*, 471 (473); *Procter & Gamble Co. v. Director General, as Agent*, 465 (470); *United Verde Extension Mining Co. v. Director General*, 488 (485); *Lesser-Goldman Cotton Co. v. L. & N. W. R. R. Co.*, 486 (488); *St. Bernard Cypress Co. v. Director General, as Agent*, 489 (490); *Philadelphia Quartz Co. v. Director General, as Agent*, 632 (634); *Rudy-Patrick Seed Co. v. Director General, as Agent*, 637 (638); *Con-
goleum Co. v. Director General, as Agent*, 757 (759).

WASTE.

The seriousness of the problem of waste brought about by loss and damage in transit is increasing rather than diminishing and anything that can be done to reduce such loss and damage is manifestly in the interest of carriers and public alike. *Pneumatic Scales Corp. v. A. & R. R. R. Co.*, 308 (309).

WATER AND RAIL. *See* RAIL AND WATER.

WATER CARRIERS. *See* BOAT LINES.

WATER COMPETITION. *See* COMPETITION.

WATER TRANSPORTATION.

Portion of the lake-and-rail rates accruing to the water carriers was not and is not subject to the Commission's jurisdiction. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 739 (741).

WEIGHT. *See also* MINIMUM WEIGHT.

Actual:

Charges on basis of minimum weight of 36,000 pounds in lieu of actual weight, on potatoes loaded to full visible capacity but less than applicable minimum, not found unreasonable. *Northern Potato Traffic Assn. v. C., B. & Q. R. R. Co.*, 385.

While provision for assessment of charges based on actual weight of shipments loaded to full visible capacity is proper where it may be determined by casual inspection, it would be highly improper in connection with potato shipments, for to leave the interpretation of such a provision to local agents would result in confusion and open the door to unlimited discriminations and preferences. *Id.* (388).

WEIGHT—Continued.

Origin *v.* destination: On yellow-pine lumber, charges assessed on basis of weight obtained at first weighing point en route. Due to shrinkage, weight at destination found less. *Held*: Charges based on weight obtained at first weighing point, not found unreasonable. *Lowry Lumber Co. v. Director General*, 503.

Scale:

Charges assessed on yellow-pine lumber based on weight registered by track scales of initial carrier at point of origin. Contention that charges were assessed on an excessive weight and should have been based on estimated weight, not sustained. *Lowry Lumber Co. v. Director General*, 165.

Charges assessed on yellow-pine lumber based on weight registered by track scales of initial carrier at intermediate point. Complainant requested that shipment be check-weighed at destination but delivery effected before letter was received. Contention that charges were assessed on an excessive weight and should have been based on estimated weight, not sustained. *Lowry Lumber Co. v. Director General*, as Agent, 635.

WRIT. *See* INJUNCTION.

ZONE RATES.

Rate adjustments between points in zones 1, 2, 3, and 4, in North Carolina and Norfolk and Richmond, Va., and points in South Carolina and the southeast; and between points in zones 1 and 2 in North Carolina and Norfolk and Richmond, and eastern ports and interior eastern points, found unduly prejudicial to the North Carolina points of Norfolk and Richmond. Reasonable relationships prescribed. *Corporation Commission of North Carolina v. Director General*, 523.

North Carolina zones 1, 2, 3, and 4, described. Appendix 1. *Id.* (546).



